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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution from Amnesty International

1. The attention of the Preparatory Committee is drawn to the contribution prepared by Amnesty International entitled "Facing up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations" which is attached to the present note. In that paper, Amnesty International puts forward a detailed series of proposals relating to the mechanisms with which it deals most frequently - the theme mechanisms and the treaty monitoring bodies.

2. In its letter of submission, Amnesty International stated that it "has been actively participating in the plans and preparations for the World Conference". It believes that "this first world summit on human rights for 25 years should be an historic occasion and that bold and creative proposals must be considered for strengthening and improving the capacity of the United Nations to deal with serious violations of human rights". Consequently, it concluded that "a major new initiative is needed" and it calls upon United Nations Member States "to establish a Special Commissioner for Human Rights as a new high-level political authority within the United Nations system". In addition, Amnesty International is also suggesting that "this should be complemented by an incremental programme of reform of the existing mechanisms and procedures which have a vital role to play in a revitalized and reinforced human rights programme". Such reforms would include "the urgent need for additional resources for the programme and for the Centre for Human Rights in order for it to carry out its important work".

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WORLD CONFERENCE ON HUMAN RIGHTS

Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations

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amnesty international

WORLD CONFERENCE ON HUMAN RIGHTS

Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations

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The United Nations is critically failing to address some of the most fundamental violations of human rights which are still occurring on a horrifying scale in the world today. The wide range of human rights mechanisms and procedures, some of which have been established for over 10 years, continue to document these violations by governments but have been able to make little progress towards the eradication of such abhorrent practices. There is a clear lack of political will on the part of member states of the UN to confer on its human rights mechanisms the necessary status, authority and capacity for action that would enable the UN to play an effective role in the promotion and protection of human rights. Respect for human rights is one of the founding principles of the UN yet its human rights program accounts for less than one per cent of the overall budget of the Organization.

The 1993 UN World Conference on Human Rights is the first high-level world summit on human rights for 25 years. Its main objectives include a thorough evaluation of the UN's methods and mechanisms in the field of human rights and the formulation of concrete proposals to improve their effectiveness. It is also expected to make recommendations to ensure the necessary financial and other resources for the human rights program. This World Conference on Human Rights should be an historic occasion; member states must go beyond mere promises and aspirations and should adopt bold and creative measures to set a progressive and forward-looking agenda for the real promotion and protection of human rights into the 21st century.

The UN must be able to act impartially and independently with effective authority to address human rights concerns in any country. It should improve its capacity for fact-finding and early warning in the field of human rights and ensure that human rights issues and concerns are factored into other UN activities. It must have the capacity for a rapid response in emergency situations and to initiate action at any point in the UN cycle, not only when human rights bodies are sitting. It must be able to address the full range of violations in any given situation in a coordinated way. It should have the capacity to develop innovative protective measures tailored to the requirements of a particular human rights situation, including an on-site presence when more sustained monitoring is required. It should improve the coordination and integration of activities which deal with or impact on human rights, including bringing human rights expertise more directly into the planning, implementation, evaluation and follow-up of conflict resolution measures and other UN programs. It should be publicly accountable, and should be accessible to local, regional and international non-governmental organizations.

Bold measures of reform are needed to fulfil these criteria for a truly effective UN human rights program. In this paper submitted to the preparatory process for the 1993 World Conference on Human Rights, Amnesty International calls on the member states of the UN to establish a Special Commissioner for Human Rights and also to adopt a complementary program of reform and strengthening of the existing human rights mechanisms, particularly its theme mechanisms and treaty-monitoring bodies. The Special Commissioner for Human Rights should function as a new high-level political authority with the capacity for speedy and independent action in urgent situations, able to coordinate the UN's human rights activities and integrate human rights fully into other areas of the UN's work, and generally give greater weight and profile to the human rights program within the UN system. At the same time the existing human rights mechanisms should be strengthened - the Special Commissioner would not replace these mechanisms or duplicate their tasks but would work closely with them in a comprehensive, reinforced and revitalized human rights program capable of responding to the opportunities and challenges facing the UN today.

KEYWORDS: UN1 / DISAPPEARANCES / TORTURE/ILL-TREATMENT / EXTRAJUDICIAL EXECUTION / ARMED CONFLICT / MISSIONS / WOMEN / MINORITIES / COMMON CRIMINALS / HUMAN RIGHTS INSTRUMENTS / INFORMATION HANDLING / INTERNATIONAL MEETINGS / IRAQ / AFGHANISTAN / GUATEMALA / YUGOSLAVIA / HAITI / EL SALVADOR / CAMBODIA / GEORGIA / LATVIA /

This report summarizes a 39-page document (17,690 words), *World Conference on Human Rights: Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations* (AI Index: IOR 41/16/92), issued by Amnesty International in December 1992. Anyone wanting further details or to take action on this issue should consult the full document.

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WORLD CONFERENCE ON HUMAN RIGHTS
Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations

I. Introduction

The United Nations World Conference on Human Rights, to be held in Vienna in June 1993, will be an historic event. Not only will it be the first UN world summit on human rights for 25 years, but it is also taking place during a critical phase in the development of the UN as a whole, as the Organization faces the new opportunities and tough challenges of the post Cold War era.

The objectives of the World Conference on Human Rights, as set out in General Assembly Resolution 45/155, include an evaluation of the effectiveness of UN's methods and mechanisms in the field of human rights and the formulation of concrete recommendations for improving the effectiveness of the UN's activities and mechanisms through programs aimed at promoting, encouraging and monitoring respect for human rights.

If these objectives are to be fulfilled in Vienna, the World Conference must examine critically and frankly the successes and the short-comings of the UN's human rights program. It must go beyond mere promises and aspirations. It should adopt concrete recommendations which not only preserve and strengthen those aspects of the program that are functioning well but which also address those areas where the international community has not been nearly as effective as it must be in tackling the grave human rights problems that afflict the world today.

The aim "to reaffirm faith in fundamental human rights" and "in the dignity and worth of the human person" is one of the foundation stones of the UN Charter. The purposes of the UN, as set out in Article 1 of the Charter, include "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". Thus the promotion and protection of human rights should underpin the whole spectrum of the UN's activities. The World Conference on Human Rights is a unique opportunity for the member states of the UN to examine in a comprehensive way the full scope of the human rights program and its close inter-relationship with the other programs and activities of the Organization. The

Conference should make the bold and creative proposals expected of such a high-level global summit meeting and should set a progressive and forward-looking agenda for the promotion and protection of human rights into the 21st century.

The UN is critically failing to address some of the most fundamental violations of human rights which are still occurring on a horrifying scale throughout the world. Notwithstanding the development of numerous international standards and procedures, the human rights program has some fundamental shortcomings which must be addressed. There are many possible areas of reform which might be explored in the context of the World Conference on Human Rights. However, Amnesty International considers that it should be a high priority for the member states of the UN to remedy the failures in the present system. In order to address these short-comings Amnesty International is proposing in this paper, which is being submitted to the preparatory process for the World Conference on Human Rights, a two-track program of reform within the UN in the field of human rights.

First, it is clear that a major reform initiative is needed and Amnesty International is calling for the establishment of **a UN Special Commissioner for Human Rights**. The Special Commissioner for Human Rights would function as a new high-level political authority in order to bring a much greater effectiveness, speed of action, coherence and coordination into the field of international human rights protection and promotion.

Second, at the same time there must also be a corresponding program of incremental reform and strengthening of the existing human rights mechanisms and procedures. Amnesty International believes that a major initiative such as a Special Commissioner for Human Rights and a program of incremental reform within the existing program can and should be pursued simultaneously and are by no means mutually exclusive. Nor would the Special Commissioner replace existing mechanisms, whose mandates and tasks are far too wide-ranging to be taken on by a single individual. The existing mechanisms and experts would instead work closely with the Special Commissioner for Human Rights, while continuing to carry out their specific mandates within a revitalized and reinforced human rights program.

Amnesty International is a world-wide voluntary movement that works to prevent some of the gravest violations of fundamental human rights by governments. The main focus of its actions is to work for the release of all prisoners of conscience - those people detained for their beliefs or because of their ethnic origin, sex, colour or language who have not used or advocated violence; for fair and prompt trials for all political prisoners; for the abolition of the death penalty and an end to torture and other cruel treatment of prisoners, extrajudicial executions and "disappearances". The organization also opposes abuses committed by armed opposition groups which are

contrary to minimum standards of humanitarian conduct such as hostage-taking, torture and killing of prisoners and other deliberate and arbitrary killings. The proposals for reform of the UN's human rights program set out in this paper are principally aimed at strengthening the capacity of the UN to address those violations which are within Amnesty International's field of work and derive from the organization's own experience of working with the UN in these areas.

However, Amnesty International recognizes that human rights are indivisible and interdependent and works to promote all human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments - economic, social, cultural, civil and political rights. Amnesty International recognizes that there is also a pressing need for the capacity and effectiveness of the UN to be strengthened in many of these other areas of the UN's human rights program as well. It hopes that governments, human rights experts and non-governmental organizations with particular expertise in these fields will also put forward other proposals aimed at strengthening these areas of the UN's human rights program.

II. The Need for a New Initiative

The UN's human rights program has undergone significant development and expansion since the adoption of the Universal Declaration of Human Rights in 1948, and since the last major international conference on human rights in Tehran in 1968. An extensive body of international human rights standards has been adopted and a wide range of mechanisms established to monitor and secure their implementation. Yet, notwithstanding these achievements, critical short-comings remain which undermine the UN's effectiveness and, in particular, its capacity to respond rapidly and adequately to grave human rights concerns.

The UN Secretary-General has stated in his 1992 report on the work of the UN that "...if standards and procedures exist for normal situations, the United Nations has not been able to act effectively to bring to an end massive human rights violations. Faced with the barbaric conduct which fills the news media today, the United Nations cannot stand idle or indifferent. The long-term credibility of our Organization as a whole will depend upon the success of our response to this challenge".[1]

Violations of the most fundamental human rights - including extrajudicial executions, "disappearances", torture and arbitrary arrest and detention - still occur daily and often on a massive scale in all regions of the world. The extensive body of reports

[1] UN Doc. A/47/1 at para. 101.

considered by the Commission on Human Rights each year, prepared by its own experts and working groups, are a shocking testimony of the precarious state of human rights protection world-wide. For example, the latest reports of its theme mechanisms on "disappearances", summary or arbitrary executions and torture provide clear evidence of the continued extent of such violations some 10 years after these mechanisms were established to combat such practices.

In 1991 the Working Group on Enforced or Involuntary Disappearances received 17,000 reports of "disappearances", the highest number of cases it has so far received in any one year. Of the 4,800 newly reported cases it transmitted to the governments concerned, 636 were reported to have occurred in 1991. The Working Group noted that this "showed an unexpected resurgence of the problem in some countries" and that the number of new cases was way beyond its capacity even to process in one year.[2] The Special Rapporteur on summary or arbitrary executions has noted that 1991 had seen a growing number of death threats, an alarming increase of deaths in custody and an increased occurrence of summary or arbitrary executions in internal conflicts. There has been a dramatic increase in the number of cases submitted to him and the number of his appeals to governments has almost doubled. In 1991 he sent no less than 174 communications to some 65 countries.[3] The Special Rapporteur on torture stated that he, too, had received "an alarming number of communications" during 1991 and the steady increase in the number of countries featured in his report, twice as many in 1991 as in his first year of operation, is "clear evidence that the practice of torture is still wide-spread". Despite all the action taken at the international level against torture, he noted that "only failures can be recorded at the national level" to the extent that "the schizoid contrast between the external and the internal behaviour of States threatens to discredit the verbally-endorsed campaign against torture".[4] The message is clear. These experts are swamped with an ever-increasing flood of cases but have been unable to have any significant impact on these practices which are a blatant contravention of the most fundamental internationally-recognized human rights norms.

The UN is increasingly called upon to play a major role in internal conflict situations which present particularly acute human rights crises, with abuses committed both by government forces and by armed opposition groups and sometimes resulting in the total disintegration of state authority and accountability. While some of the most innovative and far-reaching human rights initiatives have been developed in the context

[2] UN Doc. E/CN.4/1992/18 at paras. 4, 19.

[3] UN Doc. E/CN.4/1992/30 at para. 616.

[4] UN Doc. E/CN.4/1992/17 at paras. 6, 228.

of recent UN peace-keeping and peace-building operations, these have tended to be developed in an ad hoc and uncoordinated way and with little or no involvement of the Geneva-based human rights bodies.

Human rights concerns are still too often marginalized or excessively compartmentalized within the UN system when, to reflect the aspirations of the UN Charter, human rights promotion and protection should underpin all the UN's activities. The UN Secretary-General has stated that "[i]ncreasingly, each area of our Organization sees the relevance of human rights in its own objectives and programmes".[5] Yet, these efforts are still, for the most part, at a relatively early stage. For example, the human rights and development programs rarely interact although the close correlation between human rights and development is clearly reflected in the 1986 Declaration on the Right to Development.

There are yet other areas of the human rights program which have been somewhat neglected. The rights of women, and especially violations which impact particularly on or are directed specifically against women, and the special needs and vulnerability of children are only two categories from a longer list of areas which deserve much more sustained attention by all the human rights bodies and experts. Similarly the implementation mechanisms in respect of economic, social and cultural rights lag far behind those which are now well established in the field of civil and political rights.

III. A Special Commissioner for Human Rights

It is clear that, in order to address the complexity and range of pressing human rights issues still confronting the international community today, a major new initiative is needed. Amnesty International is proposing that this need could be met by the establishment of a UN Special Commissioner for Human Rights.

The proposal for a human rights post of this nature is by no means a new departure. There was an active debate in the 1960s and early 1970s concerning the establishment of a "High Commissioner for Human Rights" but no such post was ever created. In fact, the UN's human rights program has undergone far-reaching developments since such a post was first discussed and many of the functions originally envisaged for such a Commissioner have been taken up by the treaty-monitoring bodies and the other human rights mechanisms and procedures which have since been established. In launching its proposal for a Special Commissioner for Human Rights in

[5] UN Doc. A/47/1 at para. 109.

the 1990s. Amnesty International believes that a wholly fresh examination of the role and functions of the post of a human rights Commissioner is needed.[5]

All the developments in the framework of human rights law and procedures, which radically affect the way in which such a Commissioner would operate today as compared with 30 years ago, must be considered. It is also necessary to examine the ways in which the UN's program has so far failed to deal effectively with some of the very real and most intractable human rights problems and the reasons for this, in order to determine how such a new post established in the 1990s could best address these short-comings.

A. Essential Attributes of the Special Commissioner for Human Rights

1. The Mandate

The Special Commissioner for Human Rights should be appointed as a new high-level authority with a sole and specific human rights mandate covering the full range of rights in the economic, social, cultural, civil and political spheres. There is presently no high-level UN official or mechanism which deals exclusively with human rights. The Under-Secretary-General for Human Rights, for example, has other heavy responsibilities as Director-General of the whole UN Office in Geneva. The Special Commissioner should be a highly-respected individual with appropriate seniority and political standing and with proven expertise in the human rights field, entrusted with the authority and the necessary independence to carry out his or her functions impartially and objectively. The task of the Special Commissioner would be to maintain an overview of all the UN's human rights activities and their relationship to other program areas; to take initiatives and coordinate UN action in response to human rights emergencies; to ensure that appropriate attention is given to human rights concerns in any country of the world; to develop programs in areas which have been neglected or insufficiently developed; to formulate and oversee the human rights components of other UN operations, such as in the area of peace-keeping and peace-building, and to facilitate the involvement of the UN's human rights mechanisms and experts in these activities; and to ensure the integration of human rights issues and concerns in the full range of other UN activities and programs.

[5] In order to emphasize that it is not sufficient merely to go back to the early concept of the "High Commissioner" as it was conceived many years ago in a very different international climate, and to avoid any confusion with the UN High Commissioner for Refugees which functions rather differently, Amnesty International is suggesting that this new initiative be referred to as the Special Commissioner for Human Rights.

2. Independence and Impartiality

The appointment of a Special Commissioner with sufficient authority and responsibility to respond to human rights problems on his or her own initiative could help to ensure that the UN acts impartially and objectively in all human rights situations deserving of attention in any region of the world, based on his or her own more independent appraisal of a situation rather than only on the specific authorization of a governmental body. The selectivity of the UN's response to human rights violations is frequently criticized and action by member states is too often distorted by larger geo-political considerations. As long as a substantial number of individual governments, each with their own specific bilateral and multilateral concerns, have to reach a common agreement on an appropriate response in a given situation, it is inevitable that some situations will appear to be targeted in pursuit of a particular political agenda rather than a genuine concern for human rights, and that the voice of the most powerful international actors will tend to prevail.

There is no more compelling example than the repeated failure over a number of years of the Commission on Human Rights to address the pattern of grave and systematic violations in Iraq, with a Special Rapporteur on Iraq being appointed only in the aftermath of the invasion of Kuwait. In contrast, the despatch of an envoy of the Secretary-General to East Timor following the November 1991 Santa Cruz massacre illustrates the much greater flexibility of action when this is not dependent on a decision by member states, although it is regrettable that the envoy only made his visit some four months after the incident, his report has never been made available and there has been no apparent follow-up to this initiative.

3. Authority to Respond Effectively

Effective UN action in respect of human rights concerns which is taken seriously by member states requires an official or mechanisms having a high degree of respect and authority within the UN system. As far as concerns the special rapporteurs and working groups established by the Commission on Human Rights, for example, there are still far too many governments which simply fail to respond to requests for information; respond peremptorily and inadequately; ignore requests for a visit; or fail to report on their implem tion of recommendations made after an on-site visit. The Commission itself has done nothing to address this major impediment to the effectiveness of its own mechanisms beyond the general calls to all states to cooperate contained in its resolutions on the work of the theme mechanisms. As long as the Commission itself is unwilling to take firmer measures with respect to governments which do not cooperate fully, there is very little that the mechanisms themselves can do to address this problem. A more serious response by governments is, however, more likely to be made to a good offices

appeal at a high-level, for example by the UN Secretary-General or the head of a regional intergovernmental body. The post of Special Commissioner, carrying the necessary weight of authority and having the confidence of the international community, could do much to secure greater cooperation by member states in tackling human rights concerns addressed to them by the UN.

4. Public Accountability and Accessibility

The Special Commissioner should be publicly accountable in all his or her activities. Although there may be situations where the Special Commissioner would wish to act initially on a confidential basis, he or she should ultimately, and within a reasonable time, report on these initiatives and their outcome. Reports should include a description of particular country concerns, any action taken or recommendations made and the response by the government concerned. In particular, the Special Commissioner should ensure that confidentiality is never used as a political tool by governments to avoid public scrutiny of their human rights records. Confidentiality is not necessarily a guarantee of more effective action and it can inhibit valuable input of other mechanisms or of non-governmental organizations. It is, for example, highly questionable whether, at least as presently conducted, the confidential 1503 procedure can ever be an appropriate means to address "consistent patterns of gross violations of human rights". This is particularly so in cases where a country remains under this confidential procedure year after year with no improvement in the human rights situation.

The Special Commissioner should also be mandated to seek and receive information from a wide range of sources, including non-governmental organizations. He or she should be accessible to such organizations, both at the international level and at a regional or domestic level, especially in the context of country visits or on-site operations.

B. The Appointment of the Special Commissioner for Human Rights

To guarantee the necessary degree of independence from political interests and to ensure appropriate continuity and consistency in his or her activities, the Special Commissioner should be appointed for a term of at least five years, which could be renewable. A post of this nature would need to be mandated by the General Assembly, the UN organ to which the Special Commissioner would be ultimately responsible and would report. However, the Special Commissioner should also maintain close contacts with the Commission on Human Rights and submit a report of activities to the annual sessions of this body and, as appropriate, provide additional reports or information on specific issues under consideration at any special sessions of the Commission which may be convened.

The Special Commissioner might be most appropriately based at the UN headquarters in New York to ensure that human rights are taken seriously at the political level, to secure his or her close involvement in high-level consultations and discussions on all issues with implications for human rights promotion and protection and to facilitate the liaison and coordination between the New York headquarters and the Geneva-based human rights bodies and mechanisms. If based in Geneva, he or she would need to travel frequently to New York and would need to establish some form of representative office in New York at an appropriately high-level able to represent the Special Commissioner effectively.

There would be no need for the Special Commissioner to head a large bureaucracy as he or she would not be carrying out an alternative human rights program separate from the existing Geneva-based program. The Special Commissioner could operate, initially at least, with a modest support staff - the most important component of which could be a team of four or five senior human rights experts, drawn from different geographical regions, each of whom would be responsible for the regular oversight of the Special Commissioner's programs and activities in different world regions. These experts could also provide valuable links on a day-to-day operational level with UN staff both in New York and Geneva, as well as travelling frequently in the region for which they are responsible, in order to develop the country and regional expertise which is sorely lacking in the human rights program at present.

C. Relationship of the Special Commissioner with Existing Human Rights Mechanisms

The Special Commissioner would not be expected to replace any of the existing human rights mechanisms or take over or duplicate their activities. These mechanisms have now become well established: this year, for example, the Commission on Human Rights fully implemented the 1990 recommendation of the Economic and Social Council that the mandates of all the theme mechanisms should be extended to three-year terms. These mechanisms have gradually but surely extended the scope and nature of their activities. Although there is a need for them to be strengthened further, they do represent a significant advance in the UN's methods of addressing grave violations of human rights and should not be abandoned lightly. There is, however, considerable scope for improving the cooperation and coordination between the different mechanisms - both those which derive their mandates from international treaties and those set up by the Commission or its Sub-Commission. Once established, the Special Commissioner could contribute to ways to tackle this fragmented system of human rights promotion and protection and to on-going discussions on the need for rationalization and improved coordination. He or she could recommend ways to streamline activities and avoid unnecessary duplication.

Indeed, it would be particularly important to ensure that other human rights bodies and mechanisms are not to be prematurely abolished as a result of the establishment of the post of Special Commissioner. Nor should their mandates be restricted in ways which could undermine the current level and scope of international human rights protection since these mechanisms will have a key role to play in a revitalized and more comprehensive human rights program.

It is not envisaged, for example, that the Special Commissioner would take up large numbers of individual cases of violations in the way that the theme mechanisms routinely do; he or she could not be expected to examine in detail the extent to which all states parties are complying with treaty obligations as the treaty bodies do; he or she would not have the resources to carry out the range of detailed studies undertaken by the Sub-Commission on Prevention of Discrimination and Protection of Minorities; and the Special Commissioner would not be a substitute for the deliberations and decisions taken by the Commission on Human Rights. Rather, the Special Commissioner would be a central point of coordination and political authority and should maintain a close relationship with all these human rights bodies and mechanisms, and with the Centre for Human Rights.

The aim should be for the Special Commissioner to keep an overview of the many different aspects of the Geneva program; to draw on the expertise and the work done by existing mechanisms and experts to assist the Commissioner in his or her activities; and to ensure that the Geneva-based bodies and mechanisms are fully integrated in UN operations and programs carried out in New York, Vienna or elsewhere. For example, to address a situation involving a range of different human rights concerns that is not being dealt with elsewhere, the Special Commissioner might request that representatives of one or more of the theme mechanisms and a representative of one or more of the treaty bodies having experience relevant to the situation in question should form a team to assist the Special Commissioner. In an area of the human rights program which the Special Commissioner considers to have been neglected, he or she could draw this to the attention of the Sub-Commission and propose that it consider mandating one of its members to carry out a study and make recommendations for action. Where the work of different UN bodies which impacts on human rights concerns overlap, the Special Commission could review the degree of coordination between the two programs and ensure that vital human rights issues are not overlooked.

IV. Facing the Failures of the Current System - the Functions of the Special Commissioner for Human Rights

The Special Commissioner would be expected to have a wide-ranging mandate and the capacity for a flexible response to different human rights issues. This section addresses

a number of key characteristics of an effective UN response to human rights concerns which should be recognized as essential components of the mandate of the Special Commissioner, and identifies short-comings in this regard in the present UN system which the Special Commissioner might address. These are intended only as illustrative of the possible areas of activity of this new post and not as an exhaustive list.

A. Early Warning Function

The UN should have a much more developed and effective early warning capacity to alert it to possible impending crisis situations and to enable it to take steps to address the problems inherent in such situations before they reach crisis proportions. An early warning capacity is an integral element in the development of preventive diplomacy as the UN Secretary-General has made clear in Agenda for Peace.[7] In that regard the Secretary-General also emphasized the importance of fact-finding, encompassing economic and social trends as well as political developments, coupled with sound analysis of those facts, taking into account developments and global trends.

The increased use of fact-finding missions by the UN as a way of diffusing tension and preventing conflict now has a recognized role in the field of early warning. It is increasingly the case that countries themselves may invite or request the UN to visit and assess a tense or degenerating situation. Examples of such missions in 1992 included those to Moldova, Nagorny-Karabakh, Uzbekistan and Tadjikistan. Human rights considerations will typically be high on the agenda yet it appears that such missions have usually taken place without reference to the human rights mechanisms and without making use of their knowledge, advice and expertise or that of the Centre for Human Rights in Geneva. Despite the recognition that the early signs of possible conflict can be detected and understood in part through an examination of the human rights situation, much more could be done to ensure expert and professional human rights input into UN missions.

Some first steps have been taken in this direction in respect of the missions to Georgia and Latvia in October 1992, headed by the Director-General of the UN Office in Geneva and the Director of the Centre for Human Rights respectively. Summaries of the mission reports have been published and in Latvia the mission's recommendations for the promotion and protection of human rights include a program of advisory services and technical assistance to be carried out in cooperation with the Centre for Human Rights. In respect of Georgia, two UN staff members have remained in the country to provide an initial UN presence and recommendations have been made for a UN role in

[7] Agenda for Peace, UN Doc. A/47/227 - S/24111.

the implementation of a negotiated settlement. However, it is not clear the extent to which the human rights program may be further involved or what the longer-term plans will be for the promotion and protection of human rights in Georgia.

Much of the human rights program is devoted, in one form or another, to fact-finding and there is an increasing trend towards providing some analysis of those facts. However, these activities are too often carried out in a vacuum, remote from other UN activity related to the country in question, and there is no effective channel by which those undertaking the fact-finding can feed into a larger and more comprehensive early warning network. The considerable technical expertise and the range of country experience developed over the years within the human rights program should be fully utilized, particularly as human rights considerations become less of an issue of confrontation and can be dealt with more constructively and cooperatively.

The Special Commissioner could be integrated into a strengthened early warning system, ensuring that information gathered by the human rights bodies and mechanisms is properly channelled and reflected in eventual decision-making on possible recommendations for preventive action. He or she could also ensure that such experienced human rights input is always taken into account in the planning, carrying out and follow-up to such fact-finding missions and that the information gathered is properly analyzed and used in the specific situation as well as contributing to and informing the larger human rights debate.

B. Emergency Response Capacity

The UN system has to develop an emergency response capability in a human rights crisis or other urgent situation. All too often months pass before there is any opportunity for urgent human rights problems even to be considered at the next annual session of the Commission or regular session of the General Assembly, much less for action to be taken. The Commission's two special sessions on the former Yugoslavia held in 1992 have demonstrated that an urgent response by the full Commission is at least a possibility, and the decision taken at the first session to encourage a number of different experts of the Commission to be involved jointly in the on-site mission was a more innovative response to a crisis involving a wide range of extremely grave violations of human rights. However, such special sessions are likely to remain very exceptional, their effectiveness will always depend on a high degree of consensus among the members of the Commission, and they may not always be the most appropriate mechanism or the best use of scarce resources in a given situation.

The Commission's theme mechanisms can and often do act rapidly in individual cases but their capacity for addressing violations on a massive scale is severely limited.

They are also ill-equipped individually to deal with a situation involving a range of different violations which fall outside the specific mandate of any one of them. This was most acutely demonstrated by the lack of investigation, action or even full reporting by the Special Rapporteur on torture when confronted by the killings at Santa Cruz which actually took place while he was in East Timor in 1991 during an on-site visit to examine the question of torture.

The Special Commissioner should have the capacity to act rapidly at any time in the UN cycle in response to emergencies and to address the full range of human rights issues involved. He or she could enter into immediate dialogue with the government concerned and possibly with other governments and UN bodies if necessary; he or she could institute a fact-finding mission, drawing, as suggested above, on the expertise of the theme mechanisms, treaty-bodies and other human rights experts; draw together all information on different action already underway in respect of the country by the UN and particularly its human rights bodies; and recommend and ensure the implementation of emergency measures aimed at safeguarding the life and physical integrity of anyone at risk. In some urgent situations, the Special Commissioner would need to act on his own initiative while, in situations of much greater magnitude with larger political and other repercussions, the Special Commissioner might propose and contribute to the establishment of a human rights component of a larger coordinated UN operation.

C. Developing Flexible and Innovative Responses

The traditional responses of the Commission on Human Rights are not particularly well-suited to dealing with serious human rights situations in flexible and innovative ways. In recent years its attempts to modify its range of responses has been largely limited to developing a new category of country scrutiny - the appointment of an independent expert under the advisory services program who is simultaneously given a fact-finding mandate to investigate the human rights situation in the country concerned. As indicated in section IV.D below, this has tended to blur the distinction between the provision of advisory services and the investigation of grave human rights violations without necessarily ensuring that either role is adequately fulfilled.

It is clear that in many grave situations the more traditional practice of appointing a country expert, who undertakes one or two missions of a couple of weeks duration each year, is manifestly inadequate to deal with the situation. However, the capacity of the human rights program to respond to new opportunities, and particularly to develop an operational component involving on-site human rights experts in appropriate situations, seems extremely limited.

The Special Rapporteur on Iraq, in his first report to the Commission on Human Rights in February 1992, made a compelling case that this "exceptionally grave situation demands an exceptional response"[8] and recommended the sending to Iraq of a team of human rights monitors to remain until the situation drastically improved to investigate violations, visit places of detention and observe trial trials. The Commission in its resolution requested only that he develop this proposal further in his interim report to the General Assembly. The General Assembly expressed its deep concern that there had been no improvement in the human rights situation in Iraq and explicitly welcomed the Special Rapporteur's proposal for human rights monitors but took no action on the recommendation, merely sending this back to the Commission to follow-up at its 1993 session, which will be a year after the proposal was first made in response to an urgent and grave situation. Although the Special Rapporteur has personally addressed the Security Council and his findings and recommendations have been available to it, the issue of on-site human rights monitoring or other methods to address the extremely grave human rights situation in that country have not been seriously pursued in that body either, notwithstanding the continuing heavy UN involvement in and focus on Iraq.

The Special Rapporteur on Afghanistan, in his latest interim report to the General Assembly, also proposed that the Afghan Government should be invited to accept UN monitoring or advisory services in the field of human rights in order to stabilize the human rights situation in the country. He suggested that Operation Salam should receive funding to allow it to monitor civil and political rights as well as economic, social and cultural rights.[9] The General Assembly made no reference to this proposal in its latest resolution on Afghanistan, however.

Three other country experts of the Commission on Human Rights - on Equatorial Guinea, Guatemala and Haiti - have also called for some form of human rights presence in the field to be established in those countries in their reports to the 1992 session. In some cases, it seems that this presence would be primarily in connection with the provision of advisory services and technical assistance. However, in these cases too, the Commission itself took no action in response to these recommendations, although the October 1992 agreement between the Guatemalan Government and the representatives of refugees living in Mexico does contemplate a delegate of the UN Expert on Guatemala being based in the country in connection with the repatriation arrangements. In the case of the former Yugoslavia it has been decided to implement the Special Rapporteur's recommendation that UN staff be based in the field, but this has been very slow to materialise. The General Assembly has requested that such staff should be

[8] UN Doc. E/CN.4/1992/31 at para. 156.

[9] UN Doc. A/47/656 at para. 141.

provided to the Special Rapporteur to ensure continuous monitoring of the human rights situation in the territories of the former Yugoslavia and coordination with UNPROFOR.

The establishment by the Secretary-General in 1992 of UN Interim Offices, with information and development components, in a number of countries of the Commonwealth of Independent States represents a new initiative for closer collaboration between the Secretariat and the UN Development Programme in the field. Such steps could be an important model for closer cooperation also with the human rights program, and a means to incorporate human rights promotion and protection work, as necessary, within the larger framework of a UN presence in the field. However, this would need further study, with the close involvement of human rights experts, to develop such initiatives.

There is an increasing awareness that some form of on-site UN presence may be the most effective way to address a particular human rights situation, but there is also an urgent need for a careful and in-depth analysis of the policy issues and the comparative political, logistical and financial considerations to be fully addressed before such operations are undertaken. It is also important that the functions of an on-site presence to monitor and investigate human rights violations is not confused with a presence in connection with the provision of advisory services and that a clear distinction is maintained between the two functions. The Commission's own individual country experts are not in the best position to undertake this analysis and the Commission and the General Assembly for the most part seem paralysed in the face of such proposals.

The Special Commissioner could play the key role in developing policies and practices for a creative and more varied range of innovative responses to human rights problems that can be tailored to the requirements of a particular situation. These should include the possibility of an operational presence in the field established within the human rights program to monitor and investigate the human rights situation or, in appropriate situations, to advise on and assist in the implementation of advisory services and technical assistance projects. He or she could undertake the comparative analysis required and be brought into the planning and decision-making process concerning other forms of a UN field presence to determine their relevance for and role in human rights work. The Special Commissioner, as a high-level figure, should have the authority to conduct initial discussions with the government concerned and prepare for the establishment of an on-site presence. Once such a presence were established, the Special Commissioner could also ensure the necessary coordination and cooperation between the human rights monitors and other UN representatives in the field, such as UNHCR and UNDP personnel. An on-site UN human rights presence might be long-term or for shorter periods of several months, depending on the exigencies of the situation. This would require significant additional resources to fund an adequate operational presence.

which might also need to be established in rural as well as urban areas, and to provide adequate back-up support in the Centre for Human Rights.

In other situations, one or more extended joint missions involving a country expert and the appropriate theme mechanisms, together with medical, forensic and other experts, may be sufficient. Such joint missions have not so far been undertaken, with the significant exception of the case of the former Yugoslavia where this has proved to be very effective. The Special Commissioner could coordinate and oversee joint missions in appropriate countries, particularly in emergency situations or in those countries which are not already under scrutiny by the Commission on Human Rights.

D. Improving Technical Assistance Programs

In countries where there is a clear political commitment and a recognized capacity by the government to tackle its human rights problems, advisory services and technical assistance may be an effective and appropriate way for the UN to address the specific requirements in that country. The advisory services program and the management of the Voluntary Fund for technical assistance have undergone some recent improvements, particularly in the area of project identification, implementation and evaluation. However, this area of the human rights program is still not as open and transparent as it should be, particularly in the area of formulation and evaluation of projects, it is over-stretched and there seem to be areas of overlap. There needs to be a clearer and more extensive role for non-governmental organizations, both national and international, and their information and expertise should be utilized.

One of the major defects of the advisory services program, however, is its misuse in situations with serious human rights problems. Countries with serious human rights problems have evaded rigorous scrutiny and accountability under this program. Although it has been repeatedly stressed that advisory services should never be a substitute for human rights monitoring and investigation, the program has been seriously discredited by its application, on the decision of members of the Commission and often for political reasons, in wholly inappropriate situations. In such cases its impact has, not surprisingly, been negligible in addressing the very real human rights problems in those countries. One notable example is that of Haiti which was transferred from the confidential 1503 procedure to the advisory services program in 1987. Two years later the mandate of the expert on Haiti was extended to include a fact-finding element but the country was maintained under advisory services for a further year. One year later the Commission transferred it to public scrutiny only to return it to advisory services in 1991, seven months before the coup which overthrew the government of President Aristide. There are other examples, too, of the misuse of the advisory services program in circumstances

where technical assistance could not be expected to address the gravity of the human rights problems.

The Commission has often blurred the distinction between scrutiny of a grave human rights situation and the provision of assistance to a country by the appointment of a country expert under the program with a fact-finding mandate. A thorough analysis of the human rights situation should precede a decision to place a country under advisory services, and assistance projects should not be continued year after year without objective evaluation and analysis of the extent to which the programs have led to improvements and have met agreed objectives. The politicization of the program which inevitably occurs when it is used to avoid stronger measures of scrutiny may lead countries which could genuinely benefit from advice and assistance to be unwilling to be singled out within the same program under which the Commission is attempting to deal with serious human rights situations.

The Special Commissioner could play a significant role in overhauling the advisory services program. In particular he or she could be instrumental in taking this program out of the political arena and tailoring it to the real needs of countries which are in a position to benefit and where the government has the political will to do so. Before advisory services are undertaken the Special Commissioner could first undertake a thorough and objective analysis of the human rights situation, perhaps by requesting an expert study. Information from the Commission's theme mechanisms and the treaty bodies should be taken into account as well as that provided by the government and by non-governmental organizations. This information could provide a more objective basis for determining whether advisory services and technical assistance projects can have a real impact on the promotion and protection of human rights in the country. The Special Commissioner could assist in the implementation of a more transparent process for formulating and evaluating projects on the basis of published policy guidelines and criteria. He or she should ensure that non-governmental organizations are fully involved in this process and that the program of advisory services evolves to incorporate non-governmental organizations as beneficiaries and partners in appropriate projects. The Special Commissioner could also ensure better coordination of the human rights advisory services and technical assistance program with that carried out from Vienna under the auspices of the UN's crime program. The newly-established Commission on Crime Prevention and Criminal Justice has placed great emphasis on advisory services and there are many assistance programs in the crime field, such as those aimed at the training of law enforcement officials, strengthening judicial institutions and reinforcing the rule of law, which would also be very relevant in addressing human rights concerns. Here, too, the Special Commissioner could act as the linkage and point of coordination to ensure that assistance programs are not duplicative, but rather are mutually reinforcing and contribute to common goals on the basis of uniform evaluations and decision-making.

E. Human Rights and Conflict Resolution Activities

The UN's peace-keeping and peace-building operations are undergoing rapid expansion and development, as are other activities such as election monitoring. In Agenda for Peace the UN Secretary-General pointed out that, increasingly, in peace-keeping activities civilian officials, including human rights monitors, play as central a role as the military. He also noted that in post-conflict peace-building operations the protection of human rights is an integral part of the comprehensive measures needed to avoid a recurrence of the crisis and to consolidate the peaceful restoration of a society. However, Agenda for Peace does not elaborate further or in more detail on the policy issues, the role or the future development of the human rights components in such operations.

Although far-reaching human rights initiatives have been established within the context of UN conflict resolution operations, particularly those in El Salvador and Cambodia, these have tended to be developed in a rather haphazard way and generally without the involvement of the UN's own human rights experts in the planning, formulation or implementation of these operations.

In respect of the UN Observer Mission in El Salvador (ONUSAL), the Geneva-based bodies played no role in formulating the extensive human rights component, although the Commission's Special Representative on El Salvador had been in place for a number of years and his mandate was continued as ONUSAL began its operations. However, at its 1992 session in Resolution 1992/62 the Commission appointed instead an independent expert on El Salvador to "consider the human rights situation in the country and the effects of the Peace Agreements on the effective enjoyment of human rights, and investigate the manner in which both parties apply the recommendations contained in the final report of the Special Representative as well as those made by the United Nations Observer Mission in El Salvador and the committees established during the negotiating process". This mandate should, therefore, go some way towards establishing the necessary link between the Commission on Human Rights and this peace-building operation. Similarly, the UN Transitional Authority in Cambodia (UNTAC) comprises a specific human rights component with a mandate for general human rights oversight, a human rights education program and the investigation of complaints and corrective action. Beyond the initial consideration of possible advisory services activities, the UN's human rights bodies have so far played no part in this extensive operation although the Paris Accords explicitly envisage the appointment of a Special Rapporteur of the Commission on Human Rights after the transitional period.

In the case of the former Yugoslavia, on the other hand, the recommendations of the Commission's Special Rapporteur following his missions to areas where the UN Protection Force (UNPROFOR), which has military and civilian components, is

established have already had some impact on UNPROFOR's activities. His human rights information has, for example, informed decisions regarding the expansion and deployment of the UNPROFOR peace-keepers and he has been able to contribute to the debate on the concepts of safe zones and humanitarian relief corridors.

Certain peace-keeping operations have been mounted in the context of election monitoring in countries emerging from a prolonged conflict. In such situations, human rights considerations are again paramount as positive measures are required to re-build respect for human rights and to ensure the climate of confidence and security necessary for a fair electoral process. Where the human rights considerations are insufficiently addressed by the government or the UN, violations are likely to continue and the whole process may be placed in jeopardy. Although the UN's operation in Western Sahara (MINURSO) is not yet properly activated, there are real fears that little attention is being paid to human rights in the prelude to the referendum. In Angola, violence continued up to and beyond the elections with the UN not sufficiently prepared from the outset to ensure that the issue of human rights abuses was tackled as an integral and a priority aspect of the UN operation there (UNAVEM II).

There is now an urgent need for an expert review and frank comparative analysis of the various human rights elements of these operations and the extent to which these have been able to meet their objectives. Such an analysis would also assist in the development of policy and operational guidelines for future human rights components of peace-keeping operations. Much closer attention also needs to be paid to the implications for a precarious human rights situation of the abrupt withdrawal of a massive UN operation. There need to be adequate follow-up measures to ensure that the much longer-term process of developing constitutional and legislative guarantees and effective institutions for the promotion and protection of human rights is secured. As envisaged, but not yet formalised, in the case of Cambodia, this might well include continuing scrutiny by the UN's human rights bodies. In that situation this ought to include a continuing operational presence in the country to monitor human rights promotion and protection after the peace-keeping forces have departed.

The Special Commissioner could undertake such a comparative analysis of the human rights components of peace-keeping and peace-building operations and play a vital role in the formulation and implementation of a continuing UN human rights presence in a country or other appropriate follow-up mechanisms. Also, as human rights components of future operations are developed, the Special Commissioner could ensure that human rights expertise and the input of the relevant human rights bodies are involved in the planning, implementation and follow-up. He or she could ensure that the UN's various programs are mutually reinforcing rather than working in competition and that there is input from and involvement of non-governmental organizations - both local

and international - in this process. The human rights input into UN conflict resolution activities from and through the Special Commissioner would not only ensure that human rights professionals are fully involved but would also create the necessary distinction and distance from the political negotiations where human rights considerations will often be in danger of being compromised in the interests of a complex and difficult political settlement. The Special Commissioner could also ensure a much closer integration of the human rights bodies with any other regional intergovernmental organizations involved in a situation which have a human rights dimension to their activities.

F. Developing a Human Rights Program in Neglected Areas

There are a number of areas of the UN's human rights program which have been neglected and where much more needs to be done, whether in terms of conceptual development, comparative studies of the situation in different countries, developing monitoring and implementation mechanisms or integrating these areas into the work of existing human rights mechanisms.

For example, the human rights of women and measures to address violations specifically directed against women or which impact disproportionately on them appear to fall somewhere between the Commission on Human Rights and the Vienna-based Commission on the Status of Women. As a result, human rights issues relating specifically to women have not been dealt with adequately by either body. Human rights violations against women ought to be the concern of the human rights program and it could do far more in this area without overlap or duplication with other UN bodies or programs. Country and theme rapporteurs and working groups need to be sensitized to the need to investigate and report in more depth on situations or laws which affect women's rights and to formulate recommendations to address these. This may sometimes require a more in-depth and specific study of the effects on victims and not only the political causes of violations and general institutional methods to address these. The new draft Declaration on the Elimination of Violence against Women, adopted by a Working Group of the Commission on the Status of Women in September 1992, represents a welcome step by the UN towards developing international standards in this area but the issue of violence against women needs to inform not only the work of UN bodies dealing with women's rights, but other UN bodies as well, including the theme mechanisms of the Commission on Human Rights. Moreover the treaty body which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women is isolated from the rest of the UN's human rights work as it is serviced in Vienna rather than Geneva, and it needs to be more closely integrated into the human rights program.

The Special Commissioner could play a key role in the coordination and integration of the work of these different UN bodies which deal with the human rights of women. He or she could ensure that the sensitive area of human rights violations against women is not ignored by the human rights program, and that the work of the different bodies is mutually reinforcing and complementary rather than duplicative. He or she could also act as a catalyst to ensure that mechanisms are established which are fully competent to deal with human rights violations against women and other aspects of women's rights. Of course, the Special Commissioner's role in this regard need not, and should not, preclude closer direct cooperation between the two Commissions and other bodies dealing with human rights and women's rights.

Vulnerable groups which require greater attention within the human rights program include children, indigenous peoples, the disabled, religious, ethnic, sexual and linguistic minorities and those afflicted by HIV and AIDS. In some cases work has been done or is on-going to address the question of the protection of human rights of such groups but not enough is done in the areas of monitoring and implementation.

In the field of economic, social and cultural rights, too, much more remains to be done to develop these areas conceptually and to establish mechanisms to monitor and assist in the implementation of these rights. This is clearly indicated in the recommendations for future action contained in the last of four strong reports on the realization of economic, social and cultural rights by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.[10] In many of these areas the implementation mechanisms lag behind those developed for civil and political rights. Experience gained in the spheres of the promotion and protection of civil and political rights ought to be applied and adapted in the field of economic, social and cultural rights. Human rights experts and non-governmental organizations having specialist expertise in these fields should be closely involved in developing, with the UN, ways in which these rights can be fully protected and can be integrated more centrally into the human rights program.

A straight-forward duplication of a whole series of studies, mechanisms and procedures may well not be the most effective way to proceed in these areas and there is certainly scope for integration of some of these issues within existing mechanisms. The Special Commissioner could act as the catalyst to activate the debate on these issues and to assist in their further development, coordinating as necessary with other UN bodies and programs whose work may impact on these discussions and activities.

[10] UN Doc. E/CN.4/Sub.2/1992/16.

G. Coordination of UN Activities Which Impact on Human Rights

The Special Commissioner, having an oversight role of the full human rights program, could play a central role in improving the coordination with other UN activities which impact on human rights or where human rights concerns should also be addressed but may not always be fully taken into account.

As with the UN bodies working on human rights and on women's rights, discussed in section IV.F above, there is a similar need for closer coordination and cooperation between the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities on the one hand, and the newly-established Commission on Crime Prevention and Criminal Justice on the other. Here, too, there is a danger that essential human rights considerations will be ignored by the Commission on Crime Prevention and Criminal Justice. The General Assembly Resolution 46/152, adopted following the major review of the crime program, included the protection of human rights in the administration of justice and in the prevention and control of crime among the priorities of the program. However, there was almost no constructive discussion of human rights issues at the first session of the Commission in April 1992 and no reference to human rights in the priorities it set for itself. Some of its member governments indicated in their interventions their view that human rights issues did not belong in this Commission but should be dealt with by the Commission on Human Rights.

In fact, in the past the UN's crime program, based in Vienna, and the former expert Committee on Crime Prevention and Control have played a key role in the development of some important human rights instruments in the field of criminal justice and have made a major contribution to the international human rights framework. As with the human rights program, one of the main challenges now facing this new Commission on Crime Prevention and Criminal Justice ought to be how to ensure the more effective implementation and monitoring of the important instruments adopted in this area. This task should be undertaken with close cooperation with the human rights program since these instruments are also frequently cited and relied on in that program. The work of the Commission on Human Rights' most recent theme mechanism - the Working Group on arbitrary detention - should also be of interest and value to the crime Commission.

Closer integration with the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities is also essential. The Sub-Commission is engaged in a range of activities which are directly relevant to the crime program and to the work of the new crime Commission, particularly since the latter has decided against establishing any standing expert body to assist it. For example, the Sub-Commission's

Working Group on Detention has recently been examining juvenile justice, the use of the death penalty and the privatization of prisons. The Sub-Commission's study on fair trial and the work of its Special Rapporteur on the independence and impartiality of the judiciary, jurors and assessors are two other areas where the convergence of issues and concerns between the two programs is self-evident.

Some steps towards coordination between the two programs have been taken but this tends to be ad hoc and piece-meal. Here, too, the Special Commissioner for Human Rights could play an important and more comprehensive coordinating role between all these different bodies to ensure that important human rights concerns are dealt with by one or other and that there is no unnecessary duplication. He or she should also ensure that the important task of monitoring the implementation of the non-treaty human rights instruments which have emerged from the crime program is properly carried out and, as noted above, oversee the better coordination of the advisory services and technical assistance programs in the crime field and in the human rights field.

Another area where much greater coordination and integration is needed is in the field of development and human rights. The links between human rights and development have long been acknowledged but there is little convergence between these two programs. Article 6 of the Declaration on the Right to Development states that "equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights" and that "states should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights". This correlation between human rights and development was again reaffirmed recently by the UN Secretary-General when he stated in his 1992 report: "[h]uman rights are an essential component of sustainable development. Sustainable development is not possible without respect for human rights".[11] Here, too, the Special Commissioner could develop further the conceptual basis of these linkages and ways to bring human rights issues more directly into development programs and vice versa.

V. Proposals for Reform of Some of the Existing Mechanisms of the UN's Human Rights Program

While it is clear that a major reform initiative, such as the establishment of a Special Commissioner for Human Rights, is needed to address some of the fundamental shortcomings of the UN's human rights program, there are also a number of incremental reform measures of existing human rights mechanisms which could do much to improve

[11] UN Doc. A/47/1 at para. 100.

the functioning and effectiveness of these bodies. Such a program of incremental reform and strengthening of the existing mechanisms is particularly important in the short-term to enhance the immediate effectiveness of the UN in addressing human rights problems, pending more far-reaching reforms, such as the establishment of a Special Commissioner for Human Rights. In the longer-term, the strengthening of these mechanisms would be essential to meet the demands and challenges of a reinforced and revitalized human rights program headed by a Special Commissioner. As noted above, it is not envisaged that the Special Commissioner should take over the functions of existing mechanisms, but rather would draw on their expertise and resources to carry out his or her own mandate effectively.

The objectives of the World Conference include both the formulation of concrete measures to improve the effectiveness of the existing human rights activities and mechanisms as well as recommendations to ensure the necessary financial and other resources for the human rights program. The Conference will, therefore, be a critical test of the extent to which governments are genuinely committed to a UN human rights program with dynamic and effective human rights mechanisms which have sufficient resources to carry out their tasks.

This section sets out proposals for a series of incremental reform measures of two groups of expert human rights bodies - the theme mechanisms established by the Commission on Human Rights and the monitoring bodies set up under the international human rights treaties to review the implementation of those instruments. A number of these proposals would not require significant additional resources to put into practice. Rather, they call for a greater commitment and the political will on the part of UN member states to confer on the human rights mechanisms the necessary status, authority and capacity for effective action. As long as states ignore or refuse to take seriously the findings and recommendations of the mechanisms which they themselves have established, the UN human rights program will remain weak and ineffectual in the face of grave human rights violations and its expert bodies will never be able in practice to fulfil the mandates set out in UN resolutions or international instruments.

At the same time, the urgent question of adequate resources for the human rights program is a crucial common element that underlies many of these proposals. It is an appalling reflection of the status of the human rights program within the UN system that its entire budget amounts to less than one per cent of the budget of the Organization and that a number of its essential activities are dependent on various forms of fluctuating voluntary funding and contributions. The existing expectations placed on the human rights mechanisms by governments, non-governmental organizations and their own members has for a long time far outstripped their financial resources and their staffing. The lack of adequate resources seriously inhibits the introduction of creative and

innovative methods of work but is also increasingly threatening their ability to carry out even the most mundane and traditional tasks efficiently and effectively. Further reform and strengthening cannot be realistically contemplated without a corresponding and significant increase in resources. Nor can new mechanisms continue to be set up and expected to function effectively without the necessary financial means to carry out their tasks and without an increase in secretariat support within the Centre for Human Rights to service them.

A. The Theme Mechanisms

The theme mechanisms established by the Commission on Human Rights are often cited as its most effective and dynamic mechanisms to deal with violations of human rights. These recommendations for strengthening their work and effectiveness are directed primarily at the mechanisms with which Amnesty International has worked most closely - the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on summary or arbitrary executions and the Special Rapporteur on torture. However, a number of these points may equally well be applicable to other theme mechanisms. Some of the recommendations are already adopted as part of the working methods of one or more of the theme mechanisms but are included here as recommendations which might usefully be adopted by other existing or future theme mechanisms.

The mechanisms which deal with "disappearances", summary or arbitrary executions and torture were a creative and innovative response to some of the gravest and seemingly most intractable violations of fundamental human rights, combining in each mechanism many of the different elements which constitute an integral part of an international framework for human rights protection. They have the capacity to address violations in respect of any country; they can act, urgently if necessary, all year round: they take up individual cases; they carry out on-site visits, producing specific recommendations tailored to those country situations; they examine the phenomenon of the violation in question, producing a comprehensive set of general safeguard measures and recommendations applicable to all governments; they can act as a catalyst to encourage the development of new international standards; and they constitute channels of communication between governments and the victims of violations, their relatives and non-governmental organizations.

The annual reports of the theme mechanisms indicate the way in which they have refined and developed their methods of work over the years and sought new and more effective ways to tackle the violations within their mandates. Yet these reports are also a shocking indictment of the extent to which these violations remain rife throughout the world. While these recommendations are aimed at further ways to strengthen their work, a major responsibility lies with the Commission on Human Rights to pay closer attention

to their reports and recommendations, to act on grave reports of violations which appear in their reports year after year, to address those governments which persistently refuse to cooperate with the theme mechanisms and to demonstrate that the international community has the political will to tackle these violations and to ensure their eradication.

Recommendations

1. All the theme mechanisms should establish a dialogue between the source of a complaint and the government concerned, routinely sending copies of government responses to the sources for further observations and information and communicating such further information to the government, while protecting the confidentiality of the source whenever necessary.

2. The mechanisms should set time limits for responses from governments, which should be much shorter in the case of urgent appeals. In the event of receiving no reply or cooperation from a government within the specified time limit, the theme mechanism should be able to treat information it has received from reliable sources as valid and act upon it as appropriate. Governments which persistently fail to reply should be identified in their reports and drawn to the attention of the Commission on Human Rights for further action. For example, in its resolutions on the work of the theme mechanisms, the Commission could expressly call on these particular named countries to cooperate.

3. When a considerable number of serious allegations have been raised with a government or where a pattern of violations is revealed and the government persistently refuses to cooperate or to allow a on-site visit if one has been requested, the theme mechanism should transmit the full dossier to the Commission on Human Rights for further action.

4. The theme mechanisms should maintain a system of pending cases when replies are not received, are inadequate or otherwise do not enable the mechanism to be satisfied that the case has been properly addressed. Statistics of pending cases by country should be included in the annual reports.

5. The mechanisms should establish agreed criteria for what constitutes a full and satisfactory reply from a government in different types of cases. This might include copies of the findings of government investigations into a case, copies of autopsy and other medical reports, and copies of legal documents, including court proceedings and judgments. A case should be kept pending until a full reply according to these criteria has been received.

6. The mechanisms should continue to work on relevant cases even after the immediate danger to the victim has passed to ensure that appropriate redress, such as compensation, medical treatment and rehabilitation, are provided and that the victim is not penalized for having made or been the subject of a communication. The mere fact of release of a victim should not automatically terminate an inquiry by the theme mechanism, such as, for example, where torture is alleged to have taken place during detention or where appropriate redress has not been secured. It may be necessary for one mechanism to transfer a pending case on to another mechanism. For example, if a victim of "disappearance" reappears and alleges torture or when the person's body is located, these cases should be transmitted to the Special Rapporteurs on torture and on summary or arbitrary executions respectively. Investigations of cases of torture or "disappearances" which also involve apparent arbitrary detention should be transmitted to the Working Group on arbitrary detention.

7. The theme mechanisms should also act where they receive credible and well-documented information about situations of violations involving large numbers of individual cases or where no specific individual case may have been submitted. A summary of such allegations should be transmitted to the government for a response and should be reported on in the annual reports, together with recommendations to the Commission on Human Rights for further action. It will often be appropriate in such circumstances for the theme mechanism to press for an on-site visit and, if an invitation is not forthcoming, the Commission should call on the government to accept such a visit or take other steps to address the situation.

8. On-site visits should become a more regular part of the work of the theme mechanisms and adequate financial and staffing resources should be provided. Where serious allegations of violations have been received and a number of requests for a visit have met with denial or with no response, the theme mechanism should bring this fact, together with a summary of the allegations, to the attention of the Commission on Human Rights for further action.

9. Reports of on-site visits should always be published as separate addenda to the main reports for easier dissemination. Governments should report back fully by the time of the following annual report on the specific steps they have taken to implement the recommendations following an on-site visit. Each recommendation should be addressed and governments should indicate any difficulties they may be experiencing in implementing the recommendations and a proposed time-limit for the implementation of those not yet addressed. Copies of new legislation are important but should always be accompanied by an explanation of the way in which such legislation addresses a recommendation made and how it is functioning in practice. This information - or the lack of it - on the implementation of recommendations should be reflected in the annual

report and the Commission on Human Rights should take further steps to press governments which have not responded fully to do so. The theme mechanisms should continue to issue reminders to governments which have not provided this information and to record this fact in their reports until the information is provided or the Commission takes up the issue.

10. Where a significant number of recommendations are made following a visit and/or where the theme mechanism notes particular problems that need to be addressed, one or more follow-up visits within a reasonable period of time should become a regular feature of the process of on-site visits to examine how recommendations are being addressed and to offer further advice and observations. A theme mechanism should, if necessary, also recommend to the government and to the Commission on Human Rights that another of the mechanisms carry out a visit where problems that go beyond the mechanism's specific mandate have been identified in the course of a visit.

11. In a situation where a range of different violations have been identified, the Commission on Human Rights should recommend or the mechanisms themselves on their own initiative should be able to seek a joint visit. A joint report could be prepared reflecting generic recommendations and each of the mechanisms could also make specific recommendations directed particularly at the violations within their respective mandates. The mechanisms should also have the facility and the resources to incorporate specific experts, such as medical or forensic specialists, to accompany them on individual or joint visits as necessary.

12. The theme mechanisms should undertake a special study of the impact of the violations within their mandate on specific groups such as women and children, and formulate recommendations aimed particularly at safeguards for these groups. Women human rights experts and those with experience in the needs and rights of children should be fully utilized to assist in the carrying out of such studies, particularly where this will facilitate the interviewing of victims and the compilation of sensitive data. Women should be included in teams undertaking on-site visits with the theme mechanisms in all cases where female victims are likely to be interviewed about instances of rape and sexual abuse. Similarly in investigations relating to violations of children's rights, investigators trained to undertake this sensitive task should be included.

13. There should be more structured and regular opportunities for communication, coordination and cooperation among the theme mechanisms. It is recommended that all the theme mechanisms should meet together at least once each year for an exchange of views on their methods and areas of work and ways in which they could operate more effectively, as well as to consider country situations where a joint visit or a series of visits or other coordinated action would be valuable. Country rapporteurs and

representatives of non-governmental organizations should also be invited to address parts of these meetings for relevant discussions. The theme mechanisms should submit a report of each meeting, with their recommendations for ways that their work could be strengthened, to the next session of the Commission on Human Rights for action. These meetings would mirror the very useful biennial meetings of the Chairpersons of treaty bodies which have now become a regular practice. Like the meetings of Chairpersons, these meetings of the theme mechanisms should be open so that it would be possible for representatives of the treaty bodies and of the theme mechanisms to attend each other's meetings. In addition, both the theme mechanisms and the Chairpersons of the treaty bodies should consider inviting each other's representatives to address their meetings on issues of mutual interest and concern and to facilitate closer cooperation between these two groups of human rights bodies.

14. There should be a central documentation centre within the Centre for Human Rights available to the theme mechanisms and other human rights bodies. Country dossiers should be available containing all relevant UN and other source material relating to particular countries, including documentation from UN programs other than the human rights program as well as from the specialized agencies.

15. The computerization of the Centre for Human Rights should proceed as a matter of the highest priority - this is essential in order for the theme mechanisms and their staff to handle the volume of cases they receive and to keep track of pending cases and to prepare communications and reports to a high quality and as fast and efficiently as possible. They should have access to on-line information data-bases and the provision of communications equipment should also be radically expanded. Not only the theme mechanisms, but also the other human rights bodies and the staff of the Centre, are seriously hampered in their work by the lack of up-to-date technology and basic communications equipment such as fax machines. Many non-governmental organizations are now far more advanced than the Centre in their technology and equipment and it is unacceptable for UN staff and human rights experts working on urgent cases where a person's life or safety is frequently at risk not to be able to have access to the most efficient and fast methods of communication and storage and retrieval of information.

16. Whenever a new international instrument is being drafted which relates to the area of work of a theme mechanism, that mechanism should have the opportunity (including the necessary financial provision) to attend the meetings of working groups or other sessions where the drafting process is being carried out in order to contribute their views and expertise. Where pressure of time makes this impossible, the mechanism should be specifically requested by the Chairperson of the drafting group to submit views in writing. The involvement of the theme mechanism should be maintained throughout the drafting process until an instrument has been adopted by the Commission.

17. The Commission should request the UN Secretariat, with the assistance of the theme mechanisms, to publish a comprehensive compilation of recommendations made by each mechanism over the years aimed at prevention and safeguards in respect of the type of violation each one deals with. These should be published as a UN document, up-dated periodically and used as a set of guidelines and minimum standards for all governments. The theme mechanisms, perhaps with the assistance of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, should consider ways to examine and monitor in more depth the extent to which their recommendations have been implemented by all UN member states.

18. Fundamental to the strengthening of the work of the theme mechanisms, as for the UN human rights program as a whole, is the urgent need for significantly increased resources, both financial and in terms of adequate staff support. The volume of work that all of the theme mechanisms now handle simply cannot be carried out with the present staffing levels. The efficiency and credibility of the theme mechanisms is already being affected and this must be addressed as a matter of the highest priority, taking into account the recommendations of the theme mechanisms themselves as to their needs. Financial resources must also be provided to enable them to carry out a serious program of on-site visits, including follow-up visits, and to be able to call on the assistance of other experts in these missions to provide specialist input.

B. The Treaty-Monitoring Bodies

The treaty-monitoring bodies occupy a very special and important place in the international framework for the promotion and protection of human rights. Established under the terms of international human rights treaties,[12] they have the task of monitoring the implementation of human rights obligations which are legally binding on states parties to these treaties and which constitute commitments have been freely entered into by the governments concerned by the act of ratification or accession of the treaty. These bodies, therefore, carry out a quasi-judicial function and their findings carry a special weight and contribute in an important way to the interpretation of international human rights standards and to the growing body of international jurisprudence in the field of human rights.

The treaty-bodies do not have identical mandates or methods of work although there are many similarities between them. The more recently adopted treaties, such as

[12] The Committee on Economic, Social and Cultural Rights is the only treaty-monitoring body whose establishment is not provided for in the relevant treaty - the International Covenant on Economic, Social and Cultural Rights. This Committee was instead set up by the Economic and Social Council but otherwise functions in a similar way to the other treaty monitoring bodies.

the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, have expanded the powers of the treaty-monitoring body in new and important ways. Other later treaty bodies such as the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child, have also, on their own initiative, adopted more innovative methods of work and Rules of Procedure. There is one important way in which all the treaty bodies have been able to benefit from each other's work and this is the regular biennial meetings of the Chairpersons of the treaty-bodies. These meetings have enabled a very useful exchange of views and have resulted in the formulation of creative recommendations for improving the work of these bodies. The fourth and most recent of these meetings, held in October 1992, put forward the most detailed and comprehensive list so far elaborated by the Chairpersons of ways to improve their work and to enhance their role within the larger framework of human rights promotion and protection. It is all the more regrettable, therefore, that states parties to the treaties and the relevant UN governmental bodies have not in the past paid sufficient attention to these recommendations, some of which have been outstanding now for a number of years. It is particularly important, therefore, that special attention is given to the latest recommendations which were elaborated at the October meeting with a view to their prompt implementation.

Some of the proposals set out below have also emerged as recommendations from the treaty-bodies themselves, individually or in the context of the meetings of Chairpersons. Some are already being implemented or have long been the practice of one or more of the treaty bodies but which could usefully be applied to the other bodies. Taken together, the implementation of these proposals, together with the additional recommendations made by the Chairpersons, would significantly strengthen the work of these important human rights bodies and enhance the implementation of the international human rights treaties which form the backbone of the international system of human rights promotion and protection.

Recommendations

1. All states should, as a matter of priority, ratify or accede to the main human rights treaties. The goal of universal ratification is still very far from being realised and it should not be acceptable, for example, that states can serve as members of the principal human rights body of the UN - the Commission on Human Rights - and yet not have ratified these important instruments. All states which have not yet done so should aim to ratify these instruments during 1993, the year of the World Conference on Human Rights. When ratifying, states should also fully recognize the competence of the respective treaty bodies, including taking the necessary steps to accept individual complaints procedures.

States which require assistance or guidance in order to bring their national legislation into line with international treaty standards or otherwise to enable the ratification process to be set in motion, should seek such assistance from the advisory services and technical assistance program. The Centre for Human Rights should prepare a ratification advice kit in respect of each of the international human rights treaties which should be available to states and to non-governmental organizations, explaining the steps required by the UN to register a ratification, the main obligations undertaken by ratification, including the reporting procedure and any individual complaints mechanisms, and model legislation which could be used to implement at the national level some of the more difficult or unfamiliar international obligations, such as the universal jurisdiction provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. States should ratify international treaties without limiting reservations, declarations or understandings and those states which have previously entered such limitations to their acceptance of international obligations should undertake in 1993 to review these with a view to removing them. In particular, reservations should never be entered to non-derogable rights in a treaty since these are, by definition, fundamental obligations that go to the object and purpose of the treaty and which should never be subject to any limitation of the full protection of these rights.

The onus should be on states which do make reservations to justify the maintenance of these. Other states parties to the treaty should scrutinize such reservations and should lodge formal objections to reservations which undermine important human rights guarantees, particularly when reservations are made to non-derogable rights or to treaty provisions which constitute essential safeguards for non-derogable rights. States which have entered reservations should report on the extent and reasons for these and their practical effect domestically in their periodic reports to the relevant treaty body. In the examination of states parties' reports the treaty bodies should not hesitate to question the state concerned about such reservations and to call for the removal of reservations which limit fundamental human rights guarantees. Reservations are a particularly acute problem with regard to the Convention on the Elimination of All Forms of Discrimination Against Women. States parties to this treaty should make a special effort to review and remove such reservations, and the Committee on the Elimination of Discrimination Against Women (CEDAW) should pay particular attention to these limitations in their reviews of state party reports.

3. Derogations to treaty obligations made during a state of emergency should also be subject to special scrutiny. The onus should always be on the state concerned to justify the derogations made and to demonstrate that less drastic measures, which would not necessitate derogation, are not sufficient to deal with the situation. States should strictly

comply in all cases with the procedure for notifying derogations to the UN and, where this procedure is not complied with, derogations should be treated as null and void by other states parties and by the relevant treaty bodies. The treaty bodies should be kept fully and promptly informed by the secretariat of all notifications of derogations made during emergency situations. States should also include in their periodic reports full details of the state of emergency in question and of the nature and practical effect of any such derogations. The relevant treaty bodies should, whenever necessary, question states parties further on the justification for and extent of derogations. As part of their conclusions, treaty bodies should also recommend less extensive measures where it appears that the derogations go beyond the strict exigencies of the situation. Treaty bodies and other states parties should question particularly closely the maintenance of derogations under states of emergency where these remain in place or are repeatedly renewed year after year, since the international treaty provisions make it clear that these should only be short-term measures to deal with an exceptional situation.

4. The work being undertaken in the Sub-Commission on Prevention of Discrimination and Protection of Minorities with regard to expanding the scope of non-derogable rights to include essential safeguards of existing non-derogable rights, such as in the area of fair trial guarantees, should proceed rapidly and should lead to concrete recommendations to be taken up not only by the Commission on Human Rights but also by the states parties to the treaties concerned. Resolution 1992/35 of the Commission on Human Rights, calling on all states to establish a habeas corpus procedure or similar remedy and to ensure that such procedures are non-derogable, should be implemented by all states and formally incorporated into the International Covenant on Civil and Political Rights.

5. The procedure of examination of periodic reports will often be an insufficient means to monitor a state of emergency and its impact on the rights guaranteed by a treaty, since the state concerned may not be due to submit a periodic report for some years when an emergency is declared. In other cases, urgent situations involving grave violations may suddenly arise without a formal emergency being declared. The Human Rights Committee has on a number of recent occasions called for a special report by the state concerned in such cases and has examined this at its next session. All the treaty bodies should have the possibility, when they learn of such urgent situations where the rights guaranteed by the respective treaty appear to be in jeopardy, either to call for a special report from a state party or to send an urgent request for specific information in order to determine the nature and scope of any adverse consequences on the rights monitored by the treaty body.

In particularly urgent situations, the examination of special reports or other information requested may require the convening of a special session of the treaty body

concerned (if it is not due to meet for several months) or the development of another form of urgent and ad hoc response. This might involve the Chairperson of a treaty body (perhaps with his or her deputies) having the authority in such emergency situations to call for information or a special report from the state concerned and for the Chairperson or a limited number of members of the treaty body, under the authority of the Chairperson, to examine this and make any necessary interim recommendations. Such recommendations would be formulated pending a full examination by the whole treaty body at its next session on the basis of updated information or, if necessary, a further report from the state concerned.

6. The members of treaty bodies are expected to serve as experts in their personal capacity. They should, therefore, be wholly independent from their respective governments and should not hold an executive government post incompatible with such independent status while they are serving on a treaty body. They should be individuals with proven expertise in the field of human rights and particularly the rights guaranteed by the treaty in question. Once elected, they should not be subject to any form of governmental influence or pressure. They should also be in a position to devote the necessary time to the work of the treaty body, and at the very least should be able to be present for each full session. States parties should not elect individuals who do not fulfil these essential criteria and should raise concerns when members of treaty bodies do not, in practice, appear to be able to operate independently of their government, do not demonstrate the necessary expertise or whose other obligations do not permit them to play their full role in the work of the treaty body concerned.

7. States parties should ensure that their periodic reports on the implementation of treaty obligations are submitted on time and conform to the guidelines on reporting issued by the treaty bodies. More vigorous steps should be taken by other states parties and the General Assembly (or ECOSOC in the case of the Committee on Economic, Social and Cultural Rights) in respect of states which persistently neglect to submit reports over a period of time. States which are genuinely experiencing difficulties in fulfilling their reporting obligations should seek assistance from the advisory services program but the relevant UN bodies should be informed that such assistance is being given and this should be followed within a reasonable time by the reports required and should not be allowed to be an excuse for persistent failure to submit reports. Assistance to such states should be carefully targeted and should benefit the officials actually involved in the reporting procedure. There should be evaluation and follow-up by the secretariat and the treaty body to ensure that such assistance programs are meeting their objectives. States which do not seek such assistance and which are seriously overdue with their reports should be drawn to the attention of the higher UN bodies and should be required to present an explanation and an undertaking to submit the necessary report by the next session of the treaty body concerned.

8. When regional seminars are held under the auspices of the advisory services program in connection with treaty reporting obligations, government officials actually responsible for the reporting should attend and these seminars should also be open to international, regional and national non-governmental organizations to attend and actively participate. The important role of non-governmental organizations in the reporting process should be incorporated as a subject for discussion in such seminars. There should also be appropriate evaluation and follow-up to ensure that these seminars are meeting their objectives and that the states attending do submit the necessary reports within a reasonable time. The treaty bodies should be fully informed of the organization of such seminars, their members should take part and they should be involved in the follow-up.

9. It should not be possible for a state to escape scrutiny by the treaty bodies simply by its own failure to provide the necessary reports. When a state persistently neglects to provide the necessary reports, the treaty bodies should seek relevant information from other sources, including other UN human rights mechanisms and non-governmental organizations, if this has not already been received, and should proceed to the examination of that state's implementation of the treaty concerned on the basis of this supplementary information. The state could be notified in advance, as is the usual practice, and again be invited to submit its report and attend the examination, but if no response is received the examination should proceed in any event in the usual way with the adoption of conclusions. States parties should also not repeatedly request postponements of the examination of their reports as this distorts the work of the treaty body, inhibits the input of non-governmental organizations and can be a method of avoiding scrutiny. The treaty bodies should make clear to states that, other than in the most exceptional circumstances, more than one postponement will not be accepted and that the examination will proceed at the next session whether or not the state chooses to be present.

10. There should be much greater efforts to publicize the role of the treaty bodies, their methods of work and schedule of meetings, the time-table of reports under consideration and the conclusions reached in respect of particular countries. There has been increased interest recently by the press in respect of the work of some of the treaty bodies, but the work of others remains largely unknown. The treaty bodies should make greater use of the press. As well as giving regular press briefings on their work, they should consider issuing press releases to highlight particular areas of concern. States parties reports, together with the record of the examination by the treaty body and the conclusions reached, should be published by the UN as composite documents and these should be readily available in the countries concerned, especially in UN Information Centres.

11. The input of non-governmental organizations into the work of the treaty review process should be facilitated to a much greater extent than at present. Some governments do invite the participation and input of national organizations in the preparation of periodic reports and this practice should be adopted by other states. Such reports are, however, ultimately the responsibility of the government concerned and this input should never impede the provision of information to the treaty bodies by non-governmental organizations independently and in their own right. Non-governmental organizations have long submitted information to some of the treaty bodies, particularly in connection with their examination of states parties' reports, but this has generally been on an informal basis and has not sufficiently involved national and regional organizations which may have very pertinent information. The provisions in the rules of procedure of some of the more recently established treaty bodies, such as the Committee against Torture, which provide for the treaty body to invite formal submissions from non-governmental organizations have not generally been used. The practice of the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child in involving non-governmental organizations in their work has been more creative and open and all the treaty bodies should consider ways in which they can bring such organizations more directly into their regular work.

Prior to the examination of a state's report, for example, the designated rapporteur or other member of the treaty body could meet with non-governmental organizations present for an exchange of information. Publicity and advance information about the treaty bodies' work and the reports to be considered, as noted above, are directly relevant to the greater involvement of non-governmental organizations, particularly those at the national level. As the Committee on Economic, Social and Cultural Rights has done, experts from non-governmental organizations could also be invited by the treaty bodies to participate in an exchange of views during the sessions on the work of the treaty body, the international standards in question or other more general topics of interest and concern.

12. The practice of adopting General Comments or Recommendations, which expand upon the interpretation and scope of treaty provisions, is very valuable in developing an international jurisprudence in this area. The Human Rights Committee has adopted the most comprehensive set of General Comments and all the treaty bodies should develop this area of their work. Of course, the final decision on the content of a General Comment or Recommendation will be that of the treaty body concerned. However, as is the recognized practice with new international instruments, there should be wide dissemination of draft texts of Comments or Recommendations to facilitate outside input and views, in particular those of other human rights mechanisms (such as the relevant theme mechanisms), human rights experts and non-governmental organizations, before a new General Comment or Recommendation is adopted or an old one revised.

13. The work of treaty bodies should be central but remains, for the most part, on the periphery of the human rights program. They do not report to the Commission on Human Rights and their findings and recommendations on individual countries or in respect of the nature and scope of international human rights standards do not generally inform the work of the Commission and all its mechanisms, although their reports are public UN documents. The Commission's country and theme mechanisms should, for example, take into account the reports of the treaty bodies when examining country situations and their reports of on-site visits or individual case material should be part of the information that the treaty bodies routinely consider when preparing the examination of periodic state party reports. The treaty bodies might also consider inviting a rapporteur or working group to address it in respect of a particular country situation and its own members could be an additional resource when a mechanism or other UN body is carrying out an on-site visit where a range of different expertise is needed.

14. A central documentation centre is also as important for the work of the treaty bodies as it is for the theme mechanisms (see section V.A above). The meeting of Chairpersons of the treaty bodies has long called for the setting up of a resource room in the Centre for Human Rights and for the provision of country dossiers. Ready access to a wide range of information from relevant UN and other sources on countries under examination, including the reports of the other treaty bodies, is as essential for the treaty bodies as it is for the other human rights mechanisms. It is also important to ensure that there is adequate coordination and information exchange between the treaty bodies, and particularly with CEDAW which is serviced in Vienna rather than Geneva. The October 1992 meeting of the Chairpersons of treaty bodies called for servicing of this body to be re-located to Geneva, reflecting the concern about the fragmentation and lack of coordination as well as the marginalization of issues of women's rights from the human rights program. This issue urgently needs to be addressed, whether by re-location or by improved coordination and communication between the various treaty bodies and the UN secretariat.

15. The urgent need for the computerization of the Centre for Human Rights and for the provision of the latest technology, communications equipment, and information data-bases, already highlighted in the recommendations on the work of the theme mechanisms in section V.A above, is also an essential requirement for the treaty bodies. It would also assist in the coordination and cooperation among them and with other human rights mechanisms.

16. The treaty bodies should explore ways to increase the exchange of information and cooperation with regional human rights mechanisms also. They could invite representatives of the regional human rights bodies, particularly those which also monitor the implementation of regional treaties and examine individual complaints, to

attend a part of their session for an exchange of views or to attend part of the meeting of Chairpersons of the treaty bodies. The informal regional consultation of the Committee on the Rights of the Child held in Ecuador recently would also be an example for other treaty bodies to take up, to make their work better known in the regions and to improve communication and contacts with regional bodies, local non-governmental organizations and regional human rights experts.

17. There is no provision in some of the treaties for the submission and consideration of individual complaints. Even where there is an individual complaints procedure, this is optional and many states do not accept these provisions upon ratification of the treaty concerned. As the treaty obligations are legally binding, there should be always be provision for the treaty bodies to consider situations where it is alleged that these obligations are not being fulfilled; acceptance of a complaints procedure should be a recognized element of the obligations accepted when a state becomes a party to an international instrument. The fact that the inter-state complaints procedure has almost never been used is a clear indication that this is not sufficient and there must be some provision for non-state actors to bring complaints before the treaty bodies. States should fully accept the existing individual complaints procedures at the time that they ratify a treaty; if they do not, the treaty body concerned should question the reasons for this omission in its examination of the periodic report. Serious consideration should also be given to the formulation of an appropriate form of complaints procedure in respect of those treaties where this does not presently exist, such as the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of Discrimination Against Women.

18. The treaty bodies should be adequately resourced on the same basis from the UN regular budget to carry out their duties effectively. Existing and future treaty mechanisms should never be dependent on voluntary funding or on funding by states parties as this distorts their work and may have an impact on a state's decision to become a party to a treaty. The recently accepted amendments to the relevant treaties to put the financing of the Committee against Torture and the Committee on the Elimination of Racial Discrimination on the same footing as the other treaty bodies is welcome and these should be formally adopted and implemented without delay. Treaty bodies should also be adequately serviced by the UN secretariat and this servicing should take into account the gradual extension of their work. The periodicity and length of their meetings should also be commensurate with their workload. It seriously undermines any calls to member states to submit their reports in due time, and the accuracy of those reports, if the treaty body in question is not able to consider such reports expeditiously. Treaty bodies should have sufficient financial and secretariat resources to meet as often as is necessary for them to discharge their duties, and this should be flexible to enable them to increase their meeting time and frequency if a significant number of new reports

is submitted or as they become better established and take on new tasks. Their resources should also provide for such meetings of pre-sessional or inter-sessional working groups as the treaty bodies deem necessary for their work, as well as the possibility for emergency meetings as indicated in point (5) above.

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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution on the African Commission on Human and Peoples' Rights

The attention of the Preparatory Committee is drawn to the attached contribution submitted by Mr. Isaac Nguéma, former Chairman of the African Commission on Human and Peoples' Rights. The memorandum explains the organization and functioning of the Commission, describes its tasks of promoting and protecting human and peoples' rights and interpreting the African Charter on Human and Peoples' Rights, explains the procedure followed before the Commission and finally gives a detailed review of the activities of that regional body.

GE.93-12343

A. AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Organization, tasks, procedure and activities

by

Isaac Nguéma

Former Chairman of the African Commission on Human and Peoples' Rights

Introduction

1. With the task of ensuring the promotion and protection of human and peoples' rights in Africa, the African Commission on Human and Peoples' Rights was established by the African Charter on Human and Peoples' Rights adopted in 1981 in Nairobi by the Assembly of Heads of State and Government of the Organization of African Unity and entering into force on 21 October 1986. To date all the member States of the Organization of African Unity with the exception of Ethiopia and Swaziland have ratified it or acceded to the Charter.

2. Part I of the Charter defines the recognized and guaranteed rights and duties; Part II deals with measures of safeguard and in particular the African Commission on Human and Peoples' Rights, which, together with the OAU Assembly of Heads of State and Government is one of its supervisory bodies.

3. The Commission was established on 2 November 1987 in Addis Ababa, the headquarters of the OAU, and the first election of its members took place on 29 July 1987. Since that date it has held two ordinary sessions per year (each lasting 15 days, a duration recently reduced to 10 days by the OAU Assembly of Heads of State and Government and held in Banjul, the Commission's headquarters, or in other African capitals at the invitation of Governments). Thus, sessions have been held in:

- Addis Ababa on 2 November 1987 (first session),
- Dakar from 8 to 13 February 1988 (second session),
- Libreville from 18 to 28 April 1988 (third session),
- Cairo from 17 to 27 October 1988 (fourth session),
- Benghazi from 3 to 14 April 1989 (fifth session),
- Lagos from 18 to 25 March 1991 (ninth session),
- Tunis from 2 to 9 March 1992 (eleventh session).

In all, in its five years of existence the Commission has held 12 ordinary and two extraordinary sessions.

A. Organization and functioning of the Commission

4. The African Commission on Human and Peoples' Rights is composed of 11 members elected by secret ballot for a period of six years, membership being renewable, by the OAU Assembly of Heads of State and Government from a list of candidates submitted by the States Parties to the Charter and selected among African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights.

5. The members of the Commission serve in an individual capacity (they are in no way representatives of a State) and on a personal basis (they cannot designate anyone else) to represent them. They are totally independent. The cost of the emoluments and allowances paid to them is borne by the budget of the Organization of African Unity. In discharging their duties they enjoy the diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the OAU. The Commission, which lays down its own rules of procedure, elects its Chairman and Vice-Chairman for a period of two years. They are eligible for re-election.

6. Although not itself a permanent body, the Commission is assisted in its work by a permanent secretariat, the head of which is appointed by the Secretary-General of the Organization of African Unity. That OAU also provides the staff, the resources and the services needed by the Commission for the effective discharge of its functions. Thus after temporarily appointing as Secretary of the Commission the head of the legal division of the Organization of African Unity on 2 February 1989 the Secretary-General appointed a titular secretary who has been assisted since August 1992 by a Legal Counsel.

7. The amounts allocated to the Commission by the Secretary-General of OAU have been:

- US$ 150,000 in 1988-1989;
- US$ 742,163 in 1989-1990;
- US$ 520,736.76 in 1990-1991;
- US$ 467,980 in 1991-1992;
- US$ 501,881 in 1992-1993.

The largest sum allocated was therefore in 1989-1990.

8. The working languages are those of the OAU (Arabic, English, French). Working sessions may be public or private. The Commission may invite States, national liberation movements and specialized institutions to take part in its public sessions, which may also be attended by non-governmental organizations with observer status. The agenda is concerned, inter alia, with consideration of complaints and periodic reports drawn up by States on legislative or other

measures taken to give effect to the rights and liberties recognized and guaranteed by the Charter, together with study of activities to promote human and peoples' rights and finally items that may be proposed by the various entities called upon to participate in the Commission's work, especially non-governmental organizations.

B. The Commission's functions

9. In addition to carrying out any other tasks that may be entrusted to it by the OAU Assembly of Heads of State and Government, the Commission has three main tasks:

(a) to promote human and peoples' rights;

(b) to ensure the protection of human and peoples' rights; and

(c) to interpret the African Charter on Human and Peoples' Rights.

1. Promotion

10. As part of its task of promoting human and peoples' rights the Commission has the duty in particular:

(a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and, should the case arise, give its views or make recommendations to Governments; this function thus comprises research, documentation, information, publication, advisory services and the fostering of awareness;

(b) to formulate and lay down principles and rules, aimed at solving legal problems relating to human and peoples' rights and enjoyment of the fundamental freedoms, upon which African Governments may base their legislation: this is a quasi-legislative function which gives the Commission the right to propose and not merely to advise;

(c) to cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights: this is a cooperative and collaborative function.

2. Protection

11. As part of its protective mission, the Commission has the task in case of violations of ensuring the protection of human and peoples' rights under the conditions and according to the rules of procedure laid down by the Commission's Charter and rules of procedure. Moreover, it reviews the periodic reports drawn up by States on legislative or other measures taken to give effect to the recognized and guaranteed rights and liberties laid down in the African Charter: this is its monitoring and supervisory function.

3. Interpretation

12. As part of its function of interpreting the African Charter on Human and People's Rights, the Commission has the task of interpreting any provision of that Charter at the request of a State Party, an institution of the Organization of African Unity or an African organization recognized by the Organization of African Unity.

C. Procedure before the Commission

13. The procedure followed before the Commission is aimed at ensuring protection of human and peoples' rights in cases of violation and is largely described in the Charter itself. It was, however, supplemented and treated in more detail in the rules of procedure adopted by the Commission at its second session in Dakar in 1988. The procedure to be followed is of an eminently confidential nature. To set it in motion costs nothing: the procedure is free of charge. The services of a lawyer (although advised) are not necessary.

14. The procedure differs according to whether the violations of human and peoples' rights are serious or massive violations or not. If they are, special rules must be followed; if they are not, ordinary procedure, under ordinary law, is applied.

1. Procedure under ordinary law

15. The rules vary according to whether the applicant is or not a State Party to the Charter. In both cases, however, the ordinary procedure complies with some of the same rules.

(a) Rules connected with the nature of the applicant

(i) Case in which the complainant is a State Party to the Charter

16. If a State Party to the Charter has good reason to believe that another State also Party to the Charter has violated the Charter's provisions, it may either refer the matter direct to the Commission or content itself with a negotiated settlement, in this latter case by obtaining from the other State explanations or declarations that it finds satisfactory.

17. Otherwise within three months from the date of receipt of the original communication by the State to which it was addressed, both States have the right to submit to the Commission a complaint which is brought to the attention of the Commission's Chairman, the Secretary-General of the Organization of African Unity and the other State concerned.

(ii) Case in which the complainant is not a State Party to the Charter

18. If the complaint comes from a source other than a State Party to the Charter (a physical or moral, private or public, African or international entity), it will be referred to the Commission if the majority of its members so request. In that event the Commission will take a decision as to whether the case may properly be referred to it.

19. Moreover, the Commission is not empowered to consider the case in detail until it has made sure that the conditions for its admissibility have been fulfilled, and particularly that the subject of the application is connected with one of the guaranteed rights, etc. On this occasion it will issue a ruling on its admissibility.

(b) Common rules

20. Whether the complaint comes or not from a State Party to the Charter, the Commission can only take full cognizance of a matter once it has made sure that all local remedies that exist have been exhausted, unless it is obvious to the Commission that the procedures for applying those remedies are taking an unduly long time.

21. Whatever the case, after preliminary study carried out by a member acting as rapporteur, the Commission may invite the Government to draw up its comments in writing to which the complainant may reply. The Commission may also ask the Government complaining or the Government complained of for factual information on the circumstances of the matter.

22. In any event, the Commission, after thorough study of the complaint and exhaustion of all the ways of reaching an amicable settlement will submit to the OAU Assembly of Heads of State and Government, for its final decision, a report setting forth the facts and the conclusions it has reached, together with appropriate recommendations: the Commission has no judicial authority of its own.

2. Emergency procedure

(a) Case in which the OAU Assembly of Heads of State and Government is in session

23. If it appears following discussions in the Commission that one or more communications describe special situations which seem to reveal the existence of a set of serious or massive violations of human and peoples' rights, the Commission will draw the Assembly's attention to those situations.

24. The OAU Assembly of Heads of State and Government may then ask the Commission to carry out a thorough study of the situations and to submit to it a well-documented report accompanied by conclusions and recommendations.

(b) Case in which the OAU Assembly of Heads of State and Government is not in session

25. In the case of an emergency duly established by the Commission following revelations of the existence of serious or massive violations of human and peoples' rights, the Commission will lay the matter before the Chairman of the Organization of African Unity. The Chairman may ask the Commission to carry out a thorough study and submit to him a well-documented report on the matter containing its conclusions and recommendations.

D. Activities of the Commission

26. The range of activities undertaken by the Commission since its establishment on 2 November 1987 is reflected in each of the annual reports on its activities that it has to submit to the OAU Assembly of Heads of State and Government for consideration at each of its ordinary sessions.

27. The three first annual reports were published by the Commission in 1992 in the first issue of the "Documentation" series. The fourth annual report was published in October 1991 in the first issue of the Commission's Review. All these publications are available from the Commission's secretariat.

28. The nature of the Commission's activities is naturally based on implementation of the tasks entrusted to it.

1. Promotion

29. Promotional activities are carried out along four main lines, corresponding to the principal functions that may be deduced from a reading of the Charter.

(a) Symposia, seminars, workshops and conferences

30. Activities in this domain consist both in organizing conferences, symposia etc., and in taking part in conferences or symposia.

(i) Organization of symposia, seminars, workshops and conferences

31. With financial help from various sources the Commission organizes either or on its own initiative or in cooperation with others a large number of seminars for promoting human rights in Africa. Thus, with financial help from the Raoul Wallenberg Institute in Sweden, it recently held a seminar at Banjul from 26 to 30 October 1992 on the introduction and application of the African Charter on Human and Peoples' Rights in the African States.

32. It has also organized in cooperation:

(a) with the United Nations Centre for Human Rights, a training course on devising strategies and national mechanisms for the promotion and protection of human rights in Africa, held at Banjul from 24 to 30 April 1989, and a seminar on human rights and the administration of justice, held in Cairo from 8 to 12 July 1991;

(b) with UNESCO, a workshop on human rights in post-apartheid South Africa, held in Banjul from 18 to 21 June 1991;

(c) with the Agency for Cultural and Technical Cooperation (ACCT) and the Association sénégalaise d'études et de recherches juridiques (ASERJ), a seminar held in Dakar from 3 to 5 December 1990 on the practice of the African Commission on Human and Peoples' Rights and the precedents set by the courts;

(d) with the African International Law Association, a seminar in Banjul from 13 to 17 November 1989 on the judiciary and human rights in Africa;

(e) with the International Organization of Journalists the Union of African Journalists and the Association of Tunisian Journalists, a symposium in Tunis from 30 October to 1 November 1992 on the role of African journalists and human rights.

33. During its eleventh session, the Commission decided to carry out a programme of seminars and conferences, which it intends to organize on its own or in cooperation with other international organizations. Plans have thus been made for:

(a) a seminar on the status of women in the light of the African Charter and the requirements for economic and social development in Africa;

(b) a seminar on the right to appeal, to a fair trial and to legal assistance;

(c) a seminar on the situation of refugees and displaced persons in Africa;

(d) a seminar on post-apartheid South Africa;

(e) a seminar on peoples' participation and informal education.

(ii) Participation in symposia, seminars, workshops and conferences

34. The members of the Commission, at the request of the Commission itself in response to invitations it has received or on their own initiative when they have received direct invitations or in accordance with established programmes, take part in numerous international meetings dealing with subjects connected with human rights. Thus, during the period 1989-1992 the author of this paper participated in the meetings listed below.

35. 1989:

(a) an international symposium held in Dakar from 29 to 31 May 1989 by the Senegalese Human Rights Organization and the Agency for Cultural and Technical Cooperation on culture and human rights in French-speaking areas;

(b) an international congress organized by the Organization of African Unity and UNESCO in Yamoussoukro, from 26 June to 1 July 1989, on peace in the mind of man;

(c) an international consultation held in Geneva from 26 to 28 July 1989 by the United Nations Centre for Human Rights and the World Health Organization on AIDS and human rights;

(d) an international meeting held in Porto Novo (Benin), from 31 August to 3 September 1989, by the World Social Prospects Association (AMPS), the Organization of African Unity and the Council of Europe on interdependence and North-South solidarity;

(e) an international symposium organized in Lyon from 20 to 23 September 1989 by the International Federation of Catholic Universities on Christian culture and human rights;

(f) a symposium on human rights in Africa organized in Ottawa on 30 September 1989 by the African-Canadian Council;

(g) a symposium organized on 2 and 3 October 1989 by the Faculty of Law and Economic Sciences in Limoges, on human rights and the area covered by French legal systems;

(h) a symposium on human rights in Burundi, organized in Bujumbura from 7 to 12 October 1989 by the University of Burundi;

(i) an international meeting of experts concerned with further reflection on the concept of the rights of peoples, held in Paris from 27 to 30 November 1989;

(j) a symposium on the bicentenary of the French Revolution organized in Libreville from 12 to 14 December 1989 by the Omar-Bongo University.

36. 1990:

(a) a meeting organized by UNESCO from 8 to 10 January 1990 at San José in Costa Rica, between the members of the African Commission on Human and Peoples' Rights and members of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights;

(b) an international seminar organized in Bangui, from 22 to 26 January 1990, by the International Centre for the Respect and Application of the African Charter on Human and Peoples' Rights on problems of information and education on human rights in the rural environment;

(c) a Workshop organized in Arusha (Tanzania), from 12 to 23 February 1990 by the United Nations under the auspices of the Untied Nations Regional Centre for Peace and Disarmament in Africa, in collaboration with the Tanzanian Government and its external affairs centre on the settlement of conflicts, the prevention and management of crises, and the strengthening of trust between the African States;

(d) a national conference organized in Libreville, from 23 March to 21 April 1990, by the Government of Gabon on democracy and the multiparty system.

37. 1991:

(a) a symposium from 11 to 15 March 1991 at San Remo (Italy), organized by the Centre for Human Rights in Geneva and the International Institute of Humanitarian Law of San Remo;

(b) a symposium in Dakar from 25 to 26 March 1991 organized by the Strasbourg Conference on Parliamentary Democracy and the National Assembly of Senegal on democracy and development in Africa: the experience of the ACP countries;

(c) a training seminar in Banjul, from 8 to 12 May 1991, for senior judges in the supreme courts of Benin, Cameroon, Gabon, Guinea and Togo by the African Centre for Democracy and Human Rights Studies;

(d) a symposium from 30 May to 2 June 1991 organized in the Nordic countries (Denmark, Norway, Sweden) by the Council of Europe and the Raoul Wallenberg Institute on the Council of Europe's Convention on Human Rights;

(e) a symposium in New York from 24 to 26 June 1991 on the African Charter on Human and Peoples' Rights organized by the Fund for Peace and the Congressional Foundation on Human Rights;

(f) a teaching mission from 1 to 6 July 1991 at the International Institute of Human Rights in Strasbourg;

(g) a seminar from 7 to 11 September 1991 in Nairobi, organized by the International Association for the Defence of Religious Liberty and the International Association for Religious Freedom on "Religious freedom in Africa";

(h) a symposium from 11 to 14 September 1991 in Cotonou organized by the Agency for Cultural and Technical Cooperation on "The rule of law in the French-speaking countries";

(i) a symposium in Dakar from 24 October to 18 November 1991 organized by the Senegal Human Rights Organization on "The African experience of democracy";

(j) a meeting in Geneva on 27 and 28 November 1991 organized by SOS Torture and the International Commission of Jurists on the study of the additional protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, envisaging in particular, the establishment of a preventive committee;

(k) a symposium in Paris from 12 to 15 December 1991 organized by Paris I University on "Africa in transition towards political pluralism".

38. 1992:

(a) conference and discussion at the Père Brottier International Holy Spirit Seminary on 2 April 1992 at Libreville;

(b) international symposium from 22 to 24 April 1992 in Lisbon organized by the Council of Europe's North-South Centre on "Democracy and human rights";

(c) the third Afro-American-European Conference organized from 15 to 19 June 1992 in Strasbourg by the Friedrich Naumann Foundation in collaboration with the Hermann and Marianne Straniak Foundation and the European Commission of Human Rights on regional systems for protecting human rights in Africa, America and Europe;

(d) training and further training seminar on human rights from 2 to 9 July 1992 at the Bordeaux International School organized by the Agency for Cultural and Technical Cooperation.

(e) Second World Congress on Violence and Human Coexistence organized in Montreal from 12 to 17 July 1992 by the International Association for Scientific Exchange on Violence and Human Coexistence (ASEVICO);

(f) Congress of the Chad Human Rights League held in Ndjamena from 21 to 26 July 1992 on "Human rights in Africa";

(g) First African Meeting from 2 to 6 September 1992, held in Cotonou by the International Federation of the Action of Christians for the Abolition of Torture (IFACAT);

(h) Meeting in Paris on 16 and 17 September 1992 of the international jury for the award of the UNESCO prize for human rights teaching;

(i) international workshop held in Libreville from 23 to 26 September 1992 by UNESCO with the cooperation of the International Centre for Bantu Civilizations on "Dissemination of the results of research on the cultural aspects of environmental protection";

(j) Twenty-second Congress of the Institut international de droit d'expression Française held from 5 to 10 October 1992 in Montreal on "Protection of the child".

(b) Publications and documentation

(i) Publications

39. The Commission has published:

(a) the first issue of its Review, October 1991. This contains theoretical articles together with some documentation (including the annual report on its work and the text of the African Charter on Human and Peoples' Rights.

(b) the first issue in the series "Documentation", August 1992; this contains the first, second and third annual reports on the Commission's activities together with the texts of the African Charter on Human and Peoples' Rights and the Commission's rules of procedure.

40. The material for the second issue of the Commission's Review and material for a presentation booklet on the Commission have been with the publishers for six months waiting for the necessary funds.

(ii) Documentation

41. With the cooperation of certain international organizations in July 1992 the Commission installed in its headquarters at Banjul the first basic elements of a documentation centre, the creation of which is listed as a priority objective of the Commission's action programme adopted in 1988. Thus, data-processing equipment has been installed, a documentalist has been recruited, a certain number of databases have been established to meet the Commission's needs and during its twelfth session at Banjul from 12 to 21 October 1992 the Commission adopted an outline policy for document acquisition for the Centre. The implementation of this programme depends on the mobilization and availability for the Commission of financial resources and staff.

(c) Recommendations and resolutions

42. Since its establishment on 2 November 1987 the Commission has adopted several resolutions and put forward several draft recommendations for adoption by the OAU Assembly of Heads of State and Government. The main documents are concerned in particular with:

(a) adoption of the Commission's rules of procedure;

(b) an invitation to States which have not yet done so to ratify or accede to the African Charter on Human and Peoples' Rights;

(c) an invitation to States to incorporate the Charter in their domestic legal regulations or to introduce its provisions in their legislation;

(d) an invitation to States to arrange for periodic radio and television broadcasts on human rights;

(e) an invitation to States to introduce human rights as a subject in the primary, secondary and higher education syllabuses and in technical and professional teaching programmes;

(f) an invitation to States to promote the establishment of national or subregional institutes for research on human rights;

(g) the institution of an African Day of Human and Peoples' Rights and an invitation to States to celebrate it on 21 October every year;

(h) granting the Commission the authority to examine periodic reports and give States Parties to the Charter guidelines on their form and content;

(i) an invitation to States who have not yet submitted their initial reports to do so as soon as possible;

(j) a proposal to the OAU Assembly of Heads of State and Government to establish the Commission's headquarters formally;

(k) an invitation to States to ensure the exercise of the right to appeal, to a fair trial and to legal assistance guaranteed by article 7 of the Charter;

(l) an invitation to States to give effect to the right of freedom of association guaranteed by article 10 of the Charter.

(d) Cooperation

43. The Commission has made every effort since its establishment to integrate itself with and play a role in the vast network of institutions and organizations whose fields of activity include human rights. It has striven to obtain recognition of its vocation from world and regional institutions and organizations alike.

44. Naturally it was with the United Nations that its first relationships were established and cooperation programmes agreed. In addition to the organization of seminars or workshops that the Commission sponsors together with the United Nations Centre for Human Rights in Geneva, the Commission has been granted considerable financial assistance and has the benefit of a programme of advisory services and technical assistance services. Similar cooperative programmes are in operation with the UNESCO Division of Human Rights and Peace. Cooperative relationships have been established with the International Labour Standards and Human Rights Department of the International Labour Organisation and with the Office of the High Commissioner for Refugees.

45. At regional level the Commission receives resources from the European Economic Community (through the ACP/EEC Foundation for Cultural Cooperation), the Agency for Cultural and Technical Cooperation and the Council of Europe (thanks in particular to programmes of cooperation with the European Commission of Human Rights and the European Court of Human Rights and the International Institute of Human Rights in Strasbourg), the Commission of the Inter-American Commission on Human Rights, the Inter-American Court on Human Rights and the Inter-American Human Rights Institute.

46. Finally, the Commission receives financial aid from some Governments, such as the Swedish Government (through the Raoul Wallenberg Institute) and the Danish Government (through the Danish International Development Agency - DANIDA).

47. The Commission has also striven to obtain the assistance and logistic support of non-governmental organizations, granting those who asked for it observer status at the Commission's meetings. Observer status was first granted at the Commission's third session at Libreville from 18 to 28 April 1988. By the time the twelfth session was held in Banjul from 12 to 21 October 1992 the number of organizations with observer status had risen to about 70. The Commission makes sure that every organization presents a report at least every two years on the activities it has undertaken in connection with the Commission's terms of reference.

2. Protective activities

(a) Consideration of complaints

48. Information on the activities carried out by the Commission in considering complaints should throw light on:

(a) the total number of complaints that have been recorded by the Commission since its establishment (to which must be added those that had reached the General Secretariat of the OAU before the Commission), was established or even before its first members were elected, with precise information on:

(i) the nature of the complainants (States Party to the Charter or not);

(ii) the number of complaints the Commission had decided had properly been referred to it;

(iii) the number of complaints which had been decided to be admissible or inadmissible;

(iv) the number of complaints on which a report had been transmitted after the completion of the preliminary examination to the OAU Assembly of Heads of State and Government; and

(v) the number of complaints that had been settled by mutual agreement.

(b) the nature of the procedure launched (ordinary and emergency procedure);

(c) the number and nature of cases submitted to the Commission (civil or penal);

(d) the number and nature of decisions taken by the OAU Assembly of Heads of State and Government (condemnation or not).

49. According to the information the Commission's Secretariat was able to supply when the twelfth session began, the following comments may be made:

(a) the total number of old or new complaints recorded is 36;

(b) no complaint has been lodged by a State Party to the Charter;

(c) no procedure has been the subject of a report transmitted by the Commission for decision to the OAU Assembly of Heads of State and Government;

(d) no decision has been taken by the OAU Assembly of Heads of State and Government following complaints submitted to the Commission concerning violations of human rights;

(e) no emergency procedure resulting from serious or massive violations has been followed up by the Chairman of the OAU;

(f) of the 30 communications still pending at the time of the twelfth session none had received a reply from the States implicated.

50. As is commonly observed in other regions of the world, States show particularly strong resistance to the movement for the invigoration and liberation of individuals and peoples once supervisory organs have been established.

(b) Consideration of the periodical reports

51. After being authorized by the OAU Assembly of Heads of State and Government to draw up and transmit to the States Parties to the Charter guidelines on the form and content of periodic reports and having entrusted by that same body with the task of reviewing those reports (all matters on which the Charter is silent), the Commission at first confined itself, once the guidelines had been drafted and bearing in mind the specificity of the problems arising in the African countries, to asking States to submit initial reports on the basic aspects of their legislation (organization of the public authorities according to the Constitution or the legal text taking the place of a Constitution, organization of the judicial system, status of judges, Supreme Court and Bar). In so doing, the Commission decided to defer to a later date consideration of periodic reports on the application of the legislative or other measures taken to give effect to the rights and freedoms recognized and guaranteed by the Charter.

52. Within the limits of the guidelines laid down, the Commission had received by the time of its twelfth session, held from 12 to 21 October 1992 in Banjul, reports from Cape Verde, Egypt, Gambia, the Libyan Arab Jamahiriya, Nigeria, Rwanda, Senegal, Tanzania, Togo, Tunisia and Zimbabwe. Under the circumstances the Commission feels obliged to make periodic appeals to those States which have not yet done so to submit their reports as soon as possible. There again States have proved to be just as reluctant.

3. Other activities

53. The African Commission on Human and Peoples' Rights was invited by the Government of Mali to send some of its members as international observers to supervise the holding of the presidential elections in Mali in April 1992. This task was carried out with commitment and enthusiasm. The Commission hopes that several governments in Africa follow the example of Mali.

Conclusion

54. In conclusion and after considering the activities carried out by the Commission in the light of the tasks entrusted to it, comments are bound to arise on the imbalance between the drive and enthusiasm observed in the conduct of promotional activities and the reluctance displayed in regard to protective activities. The Commission's future must depend on the one hand on an increase in the resources allocated to its supervisory body and on the other on the liberalization and democratization of societies and regimes, or, to put it bluntly, on the evolution of Africa and its integration in the world.

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Item 5 of the provisional agenda

STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution submitted by the Committee against Torture

The attention of the Preparatory Committee is drawn to the attached recommendations submitted by the Committee against Torture to the Preparatory Committee of the World Conference on Human Rights as well as to the Conference itself. These recommendations were adopted by the Committee at its ninth session in November 1992, pursuant to paragraph 10 of General Assembly resolution 45/155.

GE.93-12355

RECOMMENDATIONS BY THE COMMITTEE AGAINST TORTURE
TO THE PREPARATORY COMMITTEE OF THE WORLD CONFERENCE ON HUMAN RIGHTS
AS WELL AS TO THE CONFERENCE ITSELF */

"The Committee against Torture,

Pursuant to paragraphs 9 and 10 of General Assembly resolution 45/155 of 18 December 1990 and paragraph 5 of Commission on Human Rights resolution 1991/30 of 5 March 1991,

1. Appoints Mr. Sorensen as representative and Mr. Mikhailov as alternate to the meetings of the Preparatory Committee of the World Conference on Human Rights,

2. Recommends that:

(a) With a view to eradicating torture by the year 2000, that subject matter should be included in the agenda of the World Conference.

(b) An energetic and concerted effort should be made both during the process of preparation for the World Conference and at the Conference itself to encourage:

(i) States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including its articles 20, 21 and 22; and

(ii) Those States parties to the Convention which have not done so to declare in favour of the provisions of articles 20, 21 and 22.

(c) In view of the unfortunate rise of ethnic violence, torture and other human rights breaches in all their manifestations in various regions of the world, the possibility should be examined of:

(i) Preventing human rights violations, especially the crime of torture, and other cruel, inhuman or degrading treatment or punishment, within the scope of the activities of the Committee; and

(ii) Increasing the United Nations budgetary resources allocated to human rights.

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*/ Adopted by the Committee at its 136th meeting, held on 20 November 1992.

3. Would welcome the opportunity, within the framework of the World Conference, for a meeting to be convened with the participation of the Chairpersons and/or representatives of the United Nations human rights treaty bodies and the Chairpersons and/or representatives of each of the principal regional and other human rights organizations to deal with the matters referred to.

4. Would also welcome the Preparatory Committee as well as the World Conference exploring the following broader issues:

(a) The establishment of a High Commissioner for Human Rights;

(b) The creation of an International Court for Human Rights;

(c) The establishment of a Research Institute for Human Rights connected with the Centre for Human Rights of the United Nations; and

(d) Cooperation and coordination with regional systems for the protection of human rights.

Suggests that with a view to improving the implementation of existing human rights standards and instruments, the following topics should be considered as appropriate ones for inclusion by the World Conference in its agenda:

(a) An examination of the issues relevant to the implementation of the Convention against Torture;

(b) An evaluation of the effectiveness of United Nations monitoring methods and mechanisms; and

(c) A formulation of concrete recommendations for improving the effectiveness of United Nations mechanisms (especially the functioning of the Convention against Torture) aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms."

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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution submitted by the fourth meeting of persons chairing the human rights treaty bodies

The attention of the Preparatory Committee is drawn to the attached recommendations submitted by the fourth meeting of persons chairing the human rights treaty bodies which met in Geneva from 12 to 16 October 1992. These recommendations to the World Conference on Human Rights have been extracted from chapter IV entitled "Conclusions and recommendations" of the report of the fourth meeting submitted to the General Assembly (A/47/628).

GE.93-12343

World Conference on Human Rights

77. In relation to the work of the Preparatory Committee for the World Conference on Human Rights, the chairpersons consider that the representatives of the treaty bodies have not so far been accorded an adequate, or appropriate, opportunity to contribute to, and participate in, the discussions. In view of the central position of the treaty bodies within the overall United Nations human rights system, this situation is a matter of serious concern. Moreover, it completely contradicts the pertinent recommendation made by the last meeting of chairpersons and subsequently endorsed by the General Assembly. The chairpersons therefore recommend that, at all future meetings as well as at the Conference itself, provision should be made for the full participation of the treaty body representatives to enable advantage to be taken of their expert input. In order to achieve this objective fully, and in recognition of the fact that the treaty bodies are an integral part of the United Nations human rights system, the General Assembly should recommend that the group of chairpersons be constituted as a special advisory body to the World Conference.

78. The chairpersons are also concerned that discussions concerning the agenda for the World Conference have so inadequately reflected the priority accorded to issues relating to the treaty bodies as stated in paragraphs 1 (c) to (e) of General Assembly resolution 45/155 of 18 December 1990. It is therefore recommended that efforts be made to ensure that sustained consideration be given to those issues in the agenda. Moreover, the chairpersons recommend that a special working group be established at the World Conference to examine issues relevant to the implementation of existing human rights standards and instruments, to formulate concrete recommendations for improving the effectiveness of United Nations mechanisms aimed at promoting, encouraging and monitoring respect for human rights, and to review the progress made in the implementation of the recommendations contained herein.

79. Regional preparatory meetings for the World Conference should also involve representatives of the treaty bodies and consideration should similarly be given to working groups examining the issues described in the preceding paragraph.

80. The chairpersons recommend that consideration be given to the holding of a meeting, within the framework of the World Conference, of the persons chairing the United Nations human rights treaty bodies and those chairing (or holding an equivalent position on) each of the principal regional and other human rights organizations, including the African Commission on Human and Peoples' Rights, the European Commission on Human Rights, the European Court of Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Committee on the Application of Conventions and Recommendations of ILO and the Committee on Conventions and Recommendations of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

81. The chairpersons recommend that the General Assembly request that an updated version of the independent expert's study on possible long-term approaches to enhancing the effective operation of existing and prospective treaty bodies (A/44/668), the preparation of which was originally requested by General Assembly resolution 43/115 of 8 December 1988, be submitted to the World Conference on Human Rights.

82. The secretariat should include one or more members of the treaty bodies within the group of persons who will be reviewing the content of the "prototype" studies to be submitted to the World Conference.